UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC 20549

FORM 10-Q

(Mark One)

☒ **QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the quarterly period ended September 30, 2024

OR

☐ **TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the transition period from ____ to ____

Commission File Number: 001-38953

The RealReal, Inc.

(Exact Name of Registrant as Specified in its Charter)

Delaware	**45-1234222**
(State or other jurisdiction of incorporation or organization)	**(I.R.S. Employer Identification No.)**
55 Francisco Street Suite 150 San Francisco, CA	**94133**
(Address of principal executive offices)	**(Zip Code)**

(855) 435-5893

(Registrant's telephone number, including area code)

Securities registered pursuant to Section 12(b) of the Act:

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common stock, $0.00001 par value	REAL	The Nasdaq Global Select Market

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes ☒ No ☐

Indicate by check mark whether the registrant has submitted electronically every Interactive Data File required to be submitted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit such files). Yes ☒ No ☐

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

Large accelerated filer	☐	Accelerated filer	☒
Non-accelerated filer	☐	Smaller reporting company	☒
Emerging growth company	☐		

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act. ☐

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes ☐ No ☒

As of October 30, 2024, the registrant had 109,691,196 shares of common stock, $0.00001 par value per share, outstanding.

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NOTE REGARDING FORWARD-LOOKING STATEMENTS

This Quarterly Report on Form 10-Q contains forward-looking statements within the meaning of the federal securities laws. All statements other than statements of historical fact contained in this Quarterly Report on Form 10-Q, including statements regarding our future results of operations and financial position, business strategy and plans, objectives of management for future operations, long term operating expenses, the opening of additional retail stores in the future, the development of our automation technology, expectations for capital requirements and the use of proceeds from our initial public offering, are forward-looking statements. These statements involve known and unknown risks, uncertainties and other important factors that may cause our actual results, performance or achievements to be materially different from any future results, performance or achievements expressed or implied by the forward-looking statements.

In some cases, you can identify forward-looking statements by terms such as "may," "should," "expects," "plans," "anticipates," "could," "intends," "target," "projects," "contemplates," "believes," "estimates," "predicts," "potential" or "continue" or the negative of these terms or other similar expressions. The forward-looking statements in this Quarterly Report on Form 10-Q are only predictions. We have based these forward-looking statements largely on our current expectations and projections about future events and financial trends that we believe may affect our business, financial condition and results of operations. These forward-looking statements speak only as of the date of this Quarterly Report on Form 10-Q and are subject to a number of risks, uncertainties and assumptions described in the section titled "Risk Factors" included under Part II, Item 1A below and elsewhere in this Quarterly Report on Form 10-Q, as well as in our other filings with the Securities and Exchange Commission (SEC). Because forward-looking statements are inherently subject to risks and uncertainties, some of which cannot be predicted or quantified, you should not rely on these forward-looking statements as predictions of future events. The events and circumstances reflected in our forward-looking statements may not be achieved or occur and actual results could differ materially from those projected in the forward-looking statements. Some of the key factors that could cause actual results to differ from our expectations include:

- our future financial performance, including our expectations regarding our revenue, cost of revenue, operating expenses, and our ability to achieve and maintain future profitability, in particular with respect to the impacts of macroeconomic uncertainty and geopolitical instability;
- our ability to return to historic levels of revenue growth and to effectively expand our operations;
- our ability to achieve anticipated savings in connection with our reduction in workforce and associated real estate reduction plan;
- our ability to successfully implement our growth strategies;
- our strategies, plans, objectives and goals;
- the market demand for authenticated, pre-owned luxury goods and new and pre-owned luxury goods in general and the online market for luxury goods;
- our ability to compete with existing and new competitors in existing and new markets and offerings;
- our ability to attract and retain consignors and buyers;
- our ability to increase the supply of luxury goods offered through our online marketplace;
- our ability to timely and effectively scale our operations;
- our ability to enter international markets;
- the accuracy and reliability of our authentication process;
- our ability to optimize, operate and manage our authentication centers;
- our ability to develop and protect our brand;
- our ability to comply with laws and regulations;
- our expectations regarding outstanding litigation;
- the reliable performance of our network infrastructure and content delivery process;
- our ability to detect and prevent data security breaches and fraud;
- our expectations and management of future growth;
- our expectations concerning relationships with third parties;
- economic and industry trends, projected growth or trend analysis;
- seasonal sales fluctuations;
- our ability to add capacity, capabilities and automation to our operations; and
- our ability to attract and retain key personnel.

In addition, statements such as "we believe" and similar statements reflect our beliefs and opinions on the relevant subject. These statements are based upon information available to us as of the date of this Quarterly Report on Form 10-Q and, although we believe such information forms a reasonable basis for such statements, such information may be limited or incomplete, and our statements should not be read to indicate that we have conducted a thorough inquiry into, or review of, all potentially available relevant information. These statements are inherently uncertain and investors are cautioned not to unduly rely upon these statements. Furthermore, if our forward-looking statements prove to be inaccurate, the inaccuracy may be material. In light of the significant uncertainties in these forward-looking statements, you should not regard these statements as a representation or warranty by us or any other person that we will achieve our objectives and plans in any specified time frame, or at all. Except as required by applicable law, we do not plan to publicly update or revise any forward-looking statements contained in this Quarterly Report on Form 10-Q, whether as a result of any new information, future events or otherwise.

PART I—FINANCIAL INFORMATION

Item 1. Financial Statements

THE REALREAL, INC.
Condensed Balance Sheets

(In thousands, except share and per share data)
(Unaudited)

	September 30, 2024	December 31, 2023
Assets		
Current assets		
Cash and cash equivalents	$ 153,179	$ 175,709
Accounts receivable, net	15,953	17,226
Inventory, net	19,921	22,246
Prepaid expenses and other current assets	22,677	20,766
Total current assets	211,730	235,947
Property and equipment, net	95,218	104,087
Operating lease right-of-use assets	79,142	86,348
Restricted cash	14,911	14,914
Other assets	5,251	5,627
Total assets	$ 406,252	$ 446,923
Liabilities and Stockholders' Deficit		
Current liabilities		
Accounts payable	$ 10,795	$ 8,961
Accrued consignor payable	73,242	77,122
Operating lease liabilities, current portion	22,487	20,094
Convertible senior notes, net, current portion	26,600	—
Other accrued and current liabilities	92,573	82,685
Total current liabilities	225,697	188,862
Operating lease liabilities, net of current portion	91,274	104,856
Convertible senior notes, net	276,483	452,421
Non-convertible notes, net	131,427	—
Warrant liability	19,626	—
Other noncurrent liabilities	7,158	4,083
Total liabilities	751,665	750,222
Commitments and contingencies (Note 11)		
Stockholders' deficit:		
Common stock, $0.00001 par value; 500,000,000 shares authorized as of September 30, 2024 and December 31, 2023; 109,689,946 and 104,670,500 shares issued and outstanding as of September 30, 2024 and December 31, 2023, respectively	1	1
Additional paid-in capital	839,958	816,325
Accumulated deficit	(1,185,372)	(1,119,625)
Total stockholders' deficit	(345,413)	(303,299)
Total liabilities and stockholders' deficit	$ 406,252	$ 446,923

The accompanying notes are an integral part of these unaudited condensed financial statements.

THE REALREAL, INC.
Condensed Statements of Operations

(In thousands, except share and per share data)
(Unaudited)

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2024	2023	2024	2023
Revenue:				
Consignment revenue	$ 116,908	$ 102,852	$ 345,270	$ 302,072
Direct revenue	15,623	17,356	45,056	63,196
Shipping services revenue	15,224	12,964	46,163	40,663
Total revenue	147,755	133,172	436,489	405,931
Cost of revenue:				
Cost of consignment revenue	13,326	13,577	39,714	43,681
Cost of direct revenue	12,925	15,686	38,970	61,162
Cost of shipping services revenue	10,791	9,837	32,347	30,859
Total cost of revenue	37,042	39,100	111,031	135,702
Gross profit	110,713	94,072	325,458	270,229
Operating expenses:				
Marketing	11,604	11,591	40,646	44,460
Operations and technology	66,199	61,038	194,593	194,645
Selling, general and administrative	47,512	44,788	141,364	138,959
Restructuring charges	—	(856)	196	37,396
Total operating expenses	125,315	116,561	376,799	415,460
Loss from operations	(14,602)	(22,489)	(51,341)	(145,231)
Change in fair value of warrant liability	744	—	(9,209)	—
Gain on extinguishment of debt	—	—	4,177	—
Interest income	1,940	2,260	6,272	6,717
Interest expense	(5,948)	(2,673)	(15,468)	(8,018)
Loss before provision for income taxes	(17,866)	(22,902)	(65,569)	(146,532)
Provision for income taxes	72	47	178	247
Net loss attributable to common stockholders	$ (17,938)	$ (22,949)	$ (65,747)	$ (146,779)
Net loss per share attributable to common stockholders				
Basic	$ (0.16)	$ (0.22)	$ (0.61)	$ (1.45)
Diluted	$ (0.17)	$ (0.22)	$ (0.61)	$ (1.45)
Shares used to compute net loss per share attributable to common stockholders				
Basic	109,016,060	102,648,790	107,043,946	101,087,793
Diluted	112,418,751	102,648,790	107,043,946	101,087,793

The accompanying notes are an integral part of these unaudited condensed financial statements.

THE REALREAL, INC.
Condensed Statements of Stockholders' Equity (Deficit)

(In thousands, except share amounts)
(Unaudited)

	Common Stock		Additional Paid-in Capital	Accumulated Deficit	Total Stockholders' Equity (Deficit)
	Shares	Amount			
Balance as of December 31, 2023	104,670,500	$ 1	$ 816,325	$ (1,119,625)	$ (303,299)
Settlement of capped calls	—	—	396	—	396
Issuance of common stock upon exercise of options	14,873	—	7	—	7
Issuance of common stock upon vesting of restricted stock units, net of shares withheld for employee taxes	1,232,416	—	(316)	—	(316)
Stock-based compensation expense	—	—	7,260	—	7,260
Net loss	—	—	—	(31,101)	(31,101)
Balance as of March 31, 2024	105,917,789	$ 1	$ 823,672	$ (1,150,726)	$ (327,053)
Issuance of common stock upon exercise of options	23,870	—	105	—	105
Issuance of common stock upon vesting of restricted stock units, net of shares withheld for employee taxes	2,220,293	—	(48)	—	(48)
Issuance of common stock for exercises under ESPP	333,753	—	624	—	624
Stock-based compensation expense	—	—	7,826	—	7,826
Net loss	—	—	—	(16,708)	(16,708)
Balance as of June 30, 2024	108,495,705	$ 1	$ 832,179	$ (1,167,434)	$ (335,254)
Issuance of common stock upon exercise of options	2,500	—	6	—	6
Issuance of common stock upon vesting of restricted stock units, net of shares withheld for employee taxes	1,191,741	—	(103)	—	(103)
Stock-based compensation expense	—	—	7,876	—	7,876
Net loss	—	—	—	(17,938)	(17,938)
Balance as of September 30, 2024	109,689,946	$ 1	$ 839,958	$ (1,185,372)	$ (345,413)

The accompanying notes are an integral part of these unaudited condensed financial statements.

THE REALREAL, INC.
Condensed Statements of Stockholders' Equity (Deficit)

(In thousands, except share amounts)
(Unaudited)

	Common Stock		Additional Paid-in Capital	Accumulated Deficit	Total Stockholders' Equity (Deficit)
	Shares	Amount			
Balance as of December 31, 2022	99,088,172	$ 1	$ 781,060	$ (951,153)	$ (170,092)
Issuance of common stock upon vesting of restricted stock units, net of shares withheld for employee taxes	1,064,260	—	(208)	—	(208)
Stock-based compensation expense	—	—	9,280	—	9,280
Net loss	—	—	—	(82,500)	(82,500)
Balance as of March 31, 2023	100,152,432	$ 1	$ 790,132	$ (1,033,653)	$ (243,520)
Issuance of common stock upon exercise of options	2,000	—	3	—	3
Issuance of common stock upon vesting of restricted stock units, net of shares withheld for employee taxes	1,512,391	—	(103)	—	(103)
Issuance of common stock for exercises under ESPP	469,199	—	446	—	446
Stock-based compensation expense	—	—	8,920	—	8,920
Net loss	—	—	—	(41,330)	(41,330)
Balance as of June 30, 2023	102,136,022	$ 1	$ 799,398	$ (1,074,983)	$ (275,584)
Issuance of common stock upon exercise of options	6,511	—	16	—	16
Issuance of common stock upon vesting of restricted stock units, net of shares withheld for employee taxes	1,168,250	—	(203)	—	(203)
Stock-based compensation expense	—	—	8,701	—	8,701
Net loss	—	—	—	(22,949)	(22,949)
Balance as of September 30, 2023	103,310,783	$ 1	$ 807,912	$ (1,097,932)	$ (290,019)

The accompanying notes are an integral part of these unaudited condensed financial statements.

THE REALREAL, INC.
Condensed Statements of Cash Flows

(In thousands)
(Unaudited)

	Nine Months Ended September 30, 2024	Nine Months Ended September 30, 2023
Cash flows from operating activities:		
Net loss	$ (65,747)	$ (146,779)
Adjustments to reconcile net loss to cash used in operating activities:		
Depreciation and amortization	24,806	23,530
Stock-based compensation expense	22,580	26,293
Reduction of operating lease right-of-use assets	11,280	12,999
Bad debt expense	1,844	1,565
Non-cash interest expense	3,761	575
Issuance costs allocated to liability classified warrants	374	—
Accretion of debt discounts and issuance costs	1,607	1,920
Property, plant, equipment, and right-of-use asset impairments	—	33,817
Provision for inventory write-downs and shrinkage	2,479	8,836
Gain on debt extinguishment	(4,177)	—
Change in fair value of warrant liability	9,209	—
Loss related to warehouse fire, net	279	—
Other adjustments	(628)	(556)
Changes in operating assets and liabilities:		
Accounts receivable, net	(571)	(2,922)
Inventory, net	96	9,474
Prepaid expenses and other current assets	990	1,897
Other assets	229	(2,856)
Operating lease liability	(15,263)	(21,399)
Accounts payable	837	(1,550)
Accrued consignor payable	(5,006)	(15,018)
Other accrued and current liabilities	10,036	(1,499)
Other noncurrent liabilities	(163)	(118)
Net cash used in operating activities	(1,148)	(71,791)
Cash flow from investing activities:		
Insurance proceeds related to warehouse fire	461	—
Capitalized proprietary software development costs	(8,051)	(9,870)
Purchases of property and equipment	(9,168)	(25,528)
Net cash used in investing activities	(16,758)	(35,398)
Cash flow from financing activities:		
Proceeds from exercise of stock options	118	19
Taxes paid related to restricted stock vesting	(467)	(501)
Proceeds from issuance of stock in connection with the Employee Stock Purchase Program	624	446
Cash received from settlement of capped calls in conjunction with the Note Exchange	396	—
Issuance costs paid related to the Note Exchange	(5,298)	—
Net cash used in financing activities	(4,627)	(36)
Net decrease in cash, cash equivalents and restricted cash	(22,533)	(107,225)
Cash, cash equivalents and restricted cash		
Beginning of period	190,623	293,793
End of period	$ 168,090	$ 186,568

THE REALREAL, INC.
Condensed Statements of Cash Flows

(In thousands)
(Unaudited)

	Nine Months Ended September 30,	
	2024	**2023**
Supplemental disclosures of cash flow information		
Cash paid for interest	$ 10,160	$ 5,522
Cash paid for income taxes	$ 197	$ 227
Supplemental disclosures of non-cash investing and financing activities		
Property and equipment additions not yet paid in cash	1,834	2,293
Capitalized proprietary software development costs additions not yet paid in cash	1,374	1,070
Stock-based compensation capitalized to proprietary software development costs	381	608
Liability classified warrants issued in connection with the Note Exchange	10,417	—
Net decrease in principal amount of debt due to the Note Exchange	(17,232)	—

The accompanying notes are an integral part of these unaudited condensed financial statements.

THE REALREAL, INC.
Notes to Unaudited Condensed Financial Statements

Note 1. Description of Business and Basis of Presentation

Organization and Description of Business

The RealReal, Inc. (the "Company") is an online marketplace for authenticated, consigned luxury goods across multiple categories, including women's fashion, men's fashion, and jewelry and watches. The Company was incorporated in the state of Delaware on March 29, 2011 and is headquartered in San Francisco, California.

Basis of Presentation

The accompanying unaudited condensed financial statements have been prepared in accordance with U.S. generally accepted accounting principles ("GAAP") and the requirements of the U.S. Securities and Exchange Commission (the "SEC") for interim reporting. The Company's functional and reporting currency is the U.S. dollar.

The condensed balance sheet as of December 31, 2023 included herein was derived from the audited financial statements as of that date. The accompanying unaudited condensed financial statements have been prepared on the same basis as the annual financial statements and, in the opinion of management, reflect all adjustments, which include only normal recurring adjustments, necessary to state fairly the Company's financial position, results of operations, stockholders' equity (deficit), and cash flows for the periods presented. For the three and nine months ended September 30, 2024 and 2023, comprehensive loss is equal to net loss as the Company has no other comprehensive income (loss) item in the periods presented. The Company has made a presentation change to reclassify loss on disposal of property and equipment, impairment of capitalized proprietary software, and gain on lease termination to other adjustments within operating cash flows in the condensed statements of cash flows. Changes to reclassify amounts in the prior periods have been made to conform to the current period presentation.

These unaudited condensed financial statements should be read in conjunction with the Company's financial statements and notes included in our Annual Report on Form 10-K filed with the SEC on March 1, 2024.

Note 2. Summary of Significant Accounting Policies

Use of Estimates

The preparation of financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities as of the date of the financial statements and the reported amounts of expenses during the reporting period. Significant items subject to such estimates and assumptions include those related to revenue recognition, including the returns reserve, standalone selling price related to consignment revenue transactions, valuation of inventory, software development costs, stock-based compensation, fair value of warrant liability, initial fair value of non-convertible notes, incremental borrowing rates related to lease liability, valuation of deferred taxes, and other contingencies. The Company evaluates its estimates and assumptions on an ongoing basis using historical experience and other factors and adjusts those estimates and assumptions when facts and circumstances dictate. Actual results could differ from those estimates. The disclosures provided herein should be read in conjunction with the audited financial statements and notes thereto included in our 2023 Form 10-K. See "Part II - Item 8. Financial Statements and Supplementary Data - Note 2" in our 2023 Form 10-K for a complete summary of our significant accounting policies.

Net Loss per Share Attributable to Common Stockholders

The Company follows the two-class method when computing net loss per common share when shares are issued that meet the definition of participating securities. The two-class method determines net loss per common share for each class of common stock and participating securities according to dividends declared or accumulated and participation rights in undistributed earnings. The two-class method requires income (loss) available or attributable to common stockholders for the period to be allocated between common stock and participating securities based upon their respective rights to receive dividends as if all income for the period had been distributed.

The Company's convertible senior notes are participating securities as they give the holders the right to receive dividends if dividends or distributions declared to the common stockholders is equal to or greater than the last reported sale price of the Company's common stock on the trading day immediately preceding the ex-dividend date for such dividend or distribution as if the instruments had been converted into shares of common stock. No undistributed earnings were allocated to the participating securities as the contingent event is not satisfied as of the reporting date.

Basic net loss per share attributable to common stockholders is calculated by dividing the net loss for the period by the weighted-average number of shares of common stock outstanding during the period. Diluted net loss per share is computed by giving effect to all potentially dilutive securities outstanding for the period using the treasury stock method or the if-converted method based on the nature of such securities (see Note 13 – Net Loss Per Share Attributable to Common Stockholders for the reconciliation of the numerator and denominator used in the calculation of the basic and diluted net loss per share attributable to common stockholders).

Revenue Recognition

The Company generates revenue from the sale of pre-owned luxury goods through its online marketplace and retail stores. Revenue is recognized upon transfer of control of promised products or services to customers in an amount that reflects the consideration the Company expects to receive in exchange for those products or services. The Company enters into contracts that include products and services that are capable of being distinct and accounted for as separate performance obligations as described below. The transaction price requires an allocation across consignment services, sales of Company-owned inventory, and shipping services. Estimation is required in the determination of the services' stand-alone selling price ("SSP").

Consignment Revenue

The Company provides a service to sell pre-owned luxury goods on behalf of consignors to buyers through its online marketplace and retail stores. The Company retains a percentage of the proceeds received as payment for its consignment service, which the Company refers to as its take rate. SSP is estimated using observable stand-alone consignment sales which are conducted without shipping services. The Company reports consignment revenue on a net basis as an agent and not the gross amount collected from the buyer. Title to the consigned goods remains with the consignor until transferred to the buyer upon purchase of the consigned goods and expiration of the allotted return period. The Company does not take title of consigned goods at any time except in certain cases where returned goods become Company-owned inventory.

The Company recognizes consignment revenue upon purchase of the consigned good by the buyer as its performance obligation of providing consignment services to the consignor is satisfied at that point. Consignment revenue is recognized net of estimated returns, cancellations, buyer incentives and adjustments. The Company recognizes a returns reserve based on historical experience, which is recorded in other accrued and current liabilities on the condensed balance sheets (see Note 5 - Condensed Balance Sheet Components). Sales tax assessed by governmental authorities is excluded from revenue.

Certain transactions provide consignors with a material right resulting from the tiered consignor commission plan. Under this plan, the amount an individual consignor receives for future sales of consigned goods may be dependent on previous consignment sales for that consignor within his/her consignment period. Accordingly, in certain consignment transactions, a small portion of the Company's consignment revenue is allocated to such material right using the portfolio method and recorded as deferred revenue, which is recorded in other accrued and current liabilities on the condensed balance sheets. The impact of the deferral has not been material to the financial statements.

The Company also generates subscription revenue from monthly memberships allowing buyers early access to shop for luxury goods. The buyers receive the early access and other benefits over the term of the subscription period, which represents a single stand-ready performance obligation. Therefore, the subscription fees paid by the buyer are recognized over the monthly subscription period. Subscription revenue was not material in the three and nine months ended September 30, 2024 and 2023.

Direct Revenue

The Company generates direct revenue from the sale of Company-owned inventory. The Company recognizes direct revenue on a gross basis upon shipment of the purchased good to the buyer as the Company acts as the principal in the transaction. SSP is estimated using observable stand-alone sales of Company-owned inventory which are conducted without shipping services, when available, or a market assessment approach. Direct revenue is recognized net of estimated returns, buyer incentives and adjustments. Sales tax assessed by governmental authorities is excluded from revenue. Cost of direct revenue is also recognized upon shipment to the buyer in an amount equal to that paid to the consignor from the original consignment sale, an amount equal to that paid as a direct purchase from a third party, or the lower of cost of the inventory purchased and its net realizable value.

Shipping Services Revenue

The Company provides a service to ship purchased items to buyers and a service to ship items from buyers back to the Company. The Company determines itself to be the principal in this arrangement. The Company charges a fee to buyers for this service and has elected to treat shipping and handling activities performed as a separate performance obligation. For shipping services revenue, the Company's SSP is estimated using a market approach considering external and internal data points on the stand-alone sales price of the shipping service. All outbound shipping and handling costs for buyers are accounted for as cost of shipping services and recognized as the shipping activity occurs. The Company also generates shipping services revenue from the shipping fees for consigned products returned by buyers to the Company within policy. The Company recognizes shipping revenue and associated costs over time as the shipping activity occurs, which is generally one to three days after shipment.

Incentives

Incentives, which include platform-wide discounts and buyer incentives, may periodically be offered to buyers. Platform-wide discounts are made available to all buyers on the online marketplace. Buyer incentives apply to specific buyers and consist of coupons or promotions that offer credits in connection with purchases on the Company's platform, and do not impact the commissions paid to consignors. These are treated as a reduction of consignment revenue and direct revenue. Additionally, the Company periodically offers commission exceptions to the standard consignment rates to consignors to optimize its supply. These are treated as a reduction of consignment revenue at the time of sale. The Company may offer a certain type of buyer incentive in the form of site credits to buyers on current transactions to be applied towards future transactions, which are included in other accrued and current liabilities on the condensed balance sheets.

Contract Liabilities

The Company's contractual liabilities primarily consist of deferred revenue for material rights primarily related to the tiered consignor commission plan, which are recognized as revenue using a portfolio approach based on the pattern of exercise, and certain buyer incentives. Contract liabilities are recorded in other accrued and current liabilities on the balance sheets and are generally expected to be recognized within one year. Contract liabilities were immaterial as of September 30, 2024 and December 31, 2023.

Cost of Revenue

Cost of consignment revenue consists of credit card fees, packaging, customer service personnel-related costs, website hosting services, and consignor inventory adjustments relating to lost or damaged products. Cost of direct revenue consists of the cost of goods sold, credit card fees, packaging, customer service personnel-related costs, website hosting services, and inventory adjustments. Cost of shipping services revenue consists of the outbound shipping and handling costs to deliver purchased items to buyers, the shipping costs for consigned products returned by buyers to the Company within policy, and an allocation of the credit card fees associated with the shipping fee charged.

Stock-based Compensation

The Company incurs stock-based compensation expense from stock options, restricted stock units ("RSUs"), performance based restricted stock units ("PSUs") subject to performance or market conditions, and employee stock purchase plan ("ESPP") purchase rights. Stock-based compensation expense related to employees and nonemployees is measured based on the grant-date fair value of the awards. The Company estimates the fair value of stock options granted and the purchase rights issued under the ESPP using the Black-Scholes option pricing model. The fair value of RSUs is estimated based on the fair market value of the Company's common stock on the date of grant, which is determined based on the closing price of the Company's common stock. Compensation expense is recognized in the statements of operations over the period during which the employee is required to perform services in exchange for the award (the vesting period of the applicable award) using the straight-line method for awards with only a service condition.

To determine the grant-date fair value of the Company's stock-based payment awards for PSUs subject to performance conditions, the quoted stock price on the date of grant is used. The stock-based compensation expense for PSUs with performance conditions is recognized based on the estimated number of shares that the Company expects will vest and is adjusted on a quarterly basis using the estimated achievement of financial performance targets. For PSUs subject to market conditions, the grant-date fair value is determined using the Monte Carlo simulation model which utilizes multiple input variables to estimate the probability that market conditions will be achieved. These variables include the Company's expected stock price volatility over the expected term of the award, the risk-free interest rate for the expected term of the award, and expected dividends. For PSUs with market conditions, the stock-based compensation expense is recognized on a tranche by tranche basis over the requisite service period using the fair value derived from the Monte Carlo simulation model. The compensation expense will be recognized regardless of whether the market condition is ever satisfied, provided the requisite service period is satisfied. For all awards, the Company accounts for forfeitures as they occur.

Cash, Cash Equivalents and Restricted Cash

The Company considers all highly liquid investments purchased with original maturities of three months or less from the purchase date to be cash equivalents. Cash equivalents primarily consist of investments in short-term money market funds.

Restricted cash consists of cash deposited with a financial institution as collateral for the Company's letters of credit for its facility leases and the Company's credit cards. The Company had $14.9 million in restricted cash as of September 30, 2024 and December 31, 2023.

The following table provides a reconciliation of cash, cash equivalents and restricted cash for the period ended September 30, 2024 and December 31, 2023 that sum to the total of the same amounts shown in the statements of cash flows (in thousands):

	September 30, 2024	December 31, 2023	September 30, 2023
Cash and cash equivalents	$ 153,179	$ 175,709	$ 170,811
Restricted cash	14,911	14,914	15,757
Total cash, cash equivalents and restricted cash	$ 168,090	$ 190,623	$ 186,568

Inventory, Net

Inventory consists of finished goods arising from goods returned after the title has transferred from the buyer to the Company as well as finished goods from direct purchases from vendors and consignors. The cost of inventory is an amount equal to that paid to the consignor or vendors. Inventory is valued at the lower of cost and net realizable value using the specific identification method and the Company records provisions, as appropriate, to write down obsolete and excess inventory to estimated net realizable value. After the inventory value is reduced, adjustments are not made to increase it from the estimated net realizable value. Additionally, inventory is recorded net of an allowance for shrinkage which represents the risk of physical loss of inventory. Provisions for inventory shrinkage are estimated based on historical experience and are adjusted based upon physical inventory counts. Provisions to write down inventory to net realizable value and provisions for inventory shrinkage were $0.6 million and $2.3 million during the three months ended September 30, 2024 and 2023, respectively, and $2.5 million and $8.8 million during the nine months ended September 30, 2024 and 2023, respectively.

Return reserves, which reduce revenue and cost of sales, are estimated using historical experience. Liabilities for return allowances are included in other accrued and current liabilities on the condensed balance sheets and were $21.3 million and $22.2 million as of September 30, 2024 and December 31, 2023, respectively. Included in inventory on the Company's condensed balance sheets are assets totaling $3.0 million and $5.2 million as of September 30, 2024 and December 31, 2023, respectively, for the rights to recover products from customers associated with its liabilities for return reserves.

Software Development Costs

Proprietary software includes the costs of developing the Company's internal proprietary business platform and automation projects. The Company capitalizes qualifying proprietary software development costs that are incurred during the application development stage. Capitalization of costs begins when two criteria are met: (1) the preliminary project stage is completed and (2) it is probable that the software will be completed and used for its intended function. Such costs are capitalized in the period incurred. Capitalization ceases and amortization begins when the software is substantially complete and ready for its intended use, including the completion of all significant testing. Costs related to preliminary project activities and post-implementation operating activities are expensed as incurred.

Impairment of Long-lived Assets

The carrying amounts of long-lived assets, including right-of-use assets, property and equipment, net and capitalized proprietary software, are periodically reviewed for impairment whenever events or changes in circumstances indicate that the carrying value of these assets may not be recoverable or that the useful life is shorter than originally estimated. Recoverability of assets to be held and used is measured by comparing the carrying amount of assets to future undiscounted net cash flows the assets are expected to generate over their remaining life.

If the assets are considered to be impaired, the amount of any impairment is measured as the difference between the carrying value and the fair value of the impaired assets. If the useful life is shorter than originally estimated, the Company amortizes the remaining carrying value over the revised shorter useful life.

Leases

Contracts that have been determined to convey the right to use an identified asset are evaluated for classification as an operating or finance lease. For the Company's operating leases, the Company records a lease liability based on the present value of the lease payments at lease inception, using the applicable incremental borrowing rate. The Company estimates the incremental borrowing rate by developing its own synthetic credit rating, corresponding yield curve, and the terms of each lease at the lease commencement date. The corresponding right-of-use asset is recorded based on the corresponding lease liability at lease inception, adjusted for payments made to the lessor at or before the commencement date, initial direct costs incurred and any tenant incentives allowed for under the lease. The Company does not include optional renewal terms or early termination provisions unless the Company is reasonably certain such options would be exercised at the inception of the lease. Operating lease right-of-use assets, current portion of operating lease liabilities, and operating lease liabilities, net of current portion are included on the Company's condensed balance sheets.

The Company has elected the practical expedients that allows for the combination of lease components and non-lease components and to record short-term leases as lease expense on a straight-line basis on the condensed statements of operations. Variable lease payments are recorded as expense as they are incurred.

The Company has finance leases for vehicles and equipment, and the amounts of finance lease right-of-use assets and finance lease liabilities have been immaterial to date.

Debt

The Company initially recognizes incurred debt, net of any discounts, premiums and issuance costs related to the debt offering. All debt issuance costs are presented as a direct deduction from the related principal debt amounts on the balance sheet. Debt obligations due within 12 months are classified as current liabilities. Debt discounts, premiums and issuance costs are amortized to interest expense over the estimated life of the related debt using the effective interest method. When multiple instruments are issued in the same transaction, the Company allocates any issuance costs to the instruments on the same basis as the allocation of proceeds. Issuance costs allocated to instruments measured at fair value are expensed in the period incurred.

Capped Call Transactions

In June 2020 and March 2021, in connection with the issuance of its convertible senior notes, the Company entered into the capped call transactions (see Note 7 - Convertible Senior Notes, Net). The capped call transactions are expected generally to reduce the potential dilution to the holders of the Company's common stock upon any conversion of the convertible senior notes and/or offset any cash payments the Company is required to make in excess of the principal amount of converted convertible senior notes, with such reduction and/or offset subject to a cap based on the cap price. The Capped Calls (as defined below) are classified in stockholders' equity as a reduction to additional paid-in capital and are not subsequently remeasured as long as the conditions for equity classification continue to be met. The Company monitors the conditions for equity classification, which continue to be met.

Concentrations of Credit Risks

Financial instruments that potentially subject the Company to concentrations of credit risk consist of cash, cash equivalents, restricted cash and accounts receivable. At times, such amount may exceed federally-insured limits. The Company is closely monitoring ongoing events involving limited liquidity, defaults, non-performance or other adverse developments that affect financial institutions or other companies in the financial services industry or the financial services industry generally. The Company reduces credit risk by placing its cash, cash equivalents, restricted cash and investments with major financial institutions with high credit ratings within the United States. The Company has not experienced any realized losses on cash, cash equivalents and restricted cash to date; however, no assurances can be provided.

As of September 30, 2024 and December 31, 2023, there were no customers that represented 10% or more of the Company's accounts receivable balance and there were no customers that individually exceeded 10% of the Company's total revenue for each of the three and nine months ended September 30, 2024 and 2023.

Recently Adopted Accounting Pronouncements

There have been no developments to recently issued accounting standards, including the expected dates of adoption and estimated effects on the Company's condensed financial statements and footnote disclosures, from those disclosed in the 2023 Annual Report on Form 10-K.

Note 3. Cash and Cash Equivalents

The following tables summarize the estimated value of the Company's cash and cash equivalents (in thousands) and do not include restricted cash. There are no unrealized gains or losses related to the restricted cash balance.

	September 30, 2024			
	Amortized Cost	Unrealized Gain	Unrealized Loss	Fair Value
Cash and cash equivalents:				
Cash	$ 17,769	$ —	$ —	$ 17,769
Money market funds	135,410	—	—	135,410
Total cash and cash equivalents	$ 153,179	$ —	$ —	$ 153,179

	December 31, 2023			
	Amortized Cost	Unrealized Gain	Unrealized Loss	Fair Value
Cash and cash equivalents:				
Cash	$ 50,947	$ —	$ —	$ 50,947
Money market funds	124,762	—	—	124,762
Total cash and cash equivalents	$ 175,709	$ —	$ —	$ 175,709

Note 4. Fair Value Measurement

Assets and liabilities recorded at fair value on a recurring basis on the condensed balance sheets are categorized based upon the level of judgment associated with the inputs used to measure their fair values. Fair value is defined as the exchange price that would be received for an asset or an exit price that would be paid to transfer a liability in the principal or most advantageous market for the asset or liability in an orderly transaction between market participants on the measurement date. Valuation techniques used to measure fair value must maximize the use of observable inputs and minimize the use of unobservable inputs. The authoritative guidance on fair value measurements establishes a three-tier fair value hierarchy for disclosure of fair value measurements as follows:

Level 1—Observable inputs such as unadjusted, quoted prices in active markets for identical assets or liabilities at the measurement date.

Level 2—Inputs (other than quoted prices included in Level 1) are either directly or indirectly observable for the asset or liability. These include quoted prices for similar assets or liabilities in active markets and quoted prices for identical or similar assets or liabilities in markets that are not active.

Level 3—Unobservable inputs that are supported by little or no market activity and that are significant to the fair value of the assets or liabilities.

There were no transfers between Level 1, Level 2 or Level 3 of the fair value hierarchy during the periods presented.

Assets and Liabilities Measured at Fair Value on a Recurring Basis

The following table sets forth the Company's financial instruments on the balance sheet that were measured at fair value on a recurring basis for the period indicated by level within the fair value hierarchy (in millions):

	September 30, 2024							
	Level 1		Level 2		Level 3		Total	
Financial assets:								
Money market funds	$	135.4	$	—	$	—	$	135.4
Total	$	135.4	$	—	$	—	$	135.4
Financial liabilities:								
Warrants	$	—	$	—	$	19.6	$	19.6
Total	$	—	$	—	$	19.6	$	19.6

As of December 31, 2023, the Company held $124.8 million in money market funds. Such amounts are considered Level 1 and the Company held no other assets or liabilities that are measured at fair value on a recurring basis.

Fair Value Measurements of Other Financial Instruments

The following table presents the carrying amounts and estimated fair values of the financial instruments that are not recorded at fair value on the condensed balance sheets (in millions):

	September 30, 2024				December 31, 2023			
	Net Carrying Amount		Estimated Fair Value		Net Carrying Amount		Estimated Fair Value	
2025 Convertible senior notes	$	26.6	$	25.7	$	170.6	$	128.2
2028 Convertible senior notes	$	276.5	$	132.2	$	281.9	$	100.0

The principal amounts of its 3.00% Convertible Senior Notes due 2025 ("2025 Notes") and 1.00% Convertible Senior Notes due 2028 (the "2028 Notes" and, together with the 2025 Notes, the "Convertible Senior Notes") are $26.7 million and $281.0 million, respectively. The difference between the principal amounts of the Convertible Senior Notes and their respective net carrying amounts are the unamortized debt issuance costs (See Note 7 - Convertible Senior Notes, Net).

As of September 30, 2024, the fair value of the 2025 Notes and the 2028 Notes, which differs from their carrying value is determined based on the quoted bid prices of the Convertible Senior Notes in an over-the-counter market using the latest trading information of the reporting period.

Fair Value Measurement of Warrants

In connection with the Note Exchange (defined in Note 6 – Non-convertible Notes, Net), the Company issued warrants (the "Warrants") to acquire an aggregate of up to 7,894,737 shares (subject to adjustment in accordance with the terms of the Warrants) of the Company's common stock to the holders of the Exchanged Notes at an exercise price of $1.71, subject to certain cashless exercise provisions and adjustment in accordance with the terms of the Warrants. The Warrants are exercisable from the date of issuance until they expire on March 1, 2029. The Warrants are accounted for as liabilities under ASC 480 since the warrants may be required to be settled in cash in case of a fundamental change, which could occur outside of the Company's control. Changes in fair value are recognized within change in fair value of warrant liability on the Company's condensed statement of operations. Issuance costs allocated to the Warrants are included in selling, general and administrative on the Company's condensed statement of operations.

The aggregate fair value of the Warrants upon issuance and as of September 30, 2024 was $10.4 million and $19.6 million, respectively, determined using a Black-Scholes Model with the following inputs:

	On issuance	September 30, 2024
Stock price	$1.77	$3.14
Exercise price	$1.71	$1.71
Expected life in years	5.00	4.42
Expected volatility	94.84 %	95.17 %
Expected dividends	— %	— %
Discount rate	4.26 %	3.58 %

The following table presents the activity related to the Warrants during the three and nine months ended September 30, 2024.

	Three Months Ended September 30, 2024	Nine Months Ended September 30, 2024
Opening balance	$ 20,370	$ —
Issuance of warrants	—	10,417
Change in fair value	(744)	9,209
Balance as of September 30, 2024	$ 19,626	$ 19,626

Note 5. Condensed Balance Sheet Components

Property and Equipment, Net

Property and equipment, net is recorded at cost less accumulated depreciation and amortization. Depreciation and amortization are recorded on a straight-line basis over the estimated useful lives of the respective assets. Property and equipment, net consists of the following (in thousands):

	September 30, 2024	December 31, 2023
Proprietary software	$ 48,890	$ 44,964
Furniture and equipment	49,059	47,389
Automobiles	2,036	2,069
Leasehold improvements	87,946	84,138
Property and equipment, gross	187,931	178,560
Less: Accumulated depreciation and amortization	(92,713)	(74,473)
Property and equipment, net	$ 95,218	$ 104,087

Depreciation and amortization expense on property and equipment was $8.1 million and $7.6 million for the three months ended September 30, 2024 and 2023, respectively, and $24.4 million and $22.9 million for the nine months ended September 30, 2024 and 2023, respectively.

During the three and nine months ended September 30, 2023, the Company recorded $0.3 million and $7.5 million of impairment of leasehold improvements and disposal of fixed assets, related to the closures of several of its office and retail locations as part of the savings plan the Company implemented. The Company did not record impairment of leasehold improvements or disposal of fixed assets related to the savings plan during the three and nine months ended September 30, 2024.

Other Accrued and Current Liabilities

Other accrued and current liabilities consist of the following (in thousands):

	September 30, 2024	December 31, 2023
Returns reserve	$ 21,265	$ 22,204
Accrued compensation	26,586	20,086
Accrued sales tax and other taxes	8,519	8,118
Site credit and gift card liability	14,096	14,058
Accrued marketing and outside services	5,872	5,012
Accrued shipping	3,364	4,244
Deferred revenue	3,425	2,214
Accrued interest	1,538	1,166
Other	7,908	5,583
Other accrued and current liabilities	$ 92,573	$ 82,685

Note 6. Non-convertible Notes, Net

Note Exchange

On February 29, 2024 (the “Closing Date”), the Company entered into exchange agreements with certain holders (the “Exchange Holders”) of its 2025 Notes and 2028 Notes to exchange (i) $145.8 million in aggregate principal amount of the 2025 Notes and (ii) $6.5 million in aggregate principal amount of the 2028 Notes (together, the “Exchanged Notes”) for $135.0 million in aggregate principal amount of the Company’s 4.25%/8.75% PIK/Cash Senior Secured Notes due 2029 (the “2029 Notes”), pursuant to an indenture (the “Note Exchange”). The 2029 Notes bear interest at a rate of 13.00% per annum, consisting of cash interest at a rate of 8.75% per annum payable semi-annually in arrears and payment in-kind (“PIK”) interest at a rate of 4.25% per annum payable semi-annually. During the nine months ended September 30, 2024, $2.9 million was added to the principal amounts outstanding due to accrued PIK interest. The 2029 Notes will mature on the earlier of (a) March 1, 2029 and (b) any date, if any, on or after December 1, 2027 on which (a) the aggregate principal amount of the 2028 Notes then outstanding is greater than $20 million and (b) the difference between (i) the amount of unrestricted cash and cash equivalents held by the Company and its subsidiaries (if any) as of such date of determination and (ii) the aggregate principal amount of 2028 Notes outstanding as of such date of determination is less than $75 million. In connection with the Note Exchange, the Company issued the Warrants (see Note 4 – Fair Value Measurement for further details on the terms of the Warrants).

As the terms of the 2029 Notes were deemed to have substantially different terms from the Exchanged Notes, the Note Exchange was accounted for as an extinguishment of the Exchanged Notes. In connection with debt extinguishment accounting, the Company recorded a gain of $4.2 million as the difference between the carrying amount of the Exchanged Notes and the fair value of the 2029 Notes. Included in the recorded gain are unamortized debt discounts and issuance costs related to the Exchanged Notes and the fair value of the Warrants as they represent fees paid to the Exchange Holders as part of the Note Exchange.

The Company allocated issuance costs to the Warrants and the 2029 Notes based on relative fair value. The Company allocated $0.4 million of issuance costs to the Warrants with the balance being allocated to the 2029 Notes. Issuance costs related to the 2029 Notes are being amortized to interest expense through the expected maturity of the 2029 Notes at an effective interest rate of 13.35%.

The indenture governing the 2029 Notes contains certain covenants, which include (i) a covenant by the Company not to permit liquidity (calculated as the sum of (a) unused commitments then available to be drawn under any revolving credit facility, delayed draw term loan facility or qualified securitization financing permitted thereunder (after giving effect to any borrowing base or similar limitations), plus (b) the amount of unrestricted cash and cash equivalents held by the Company and its subsidiaries (if any)) to be less than $25 million as of the last day of any month, (ii) limitations on the Company’s and certain of its future subsidiaries’ (if any) ability to, among other things, (a) grant or incur liens securing indebtedness, (b) incur assume or guarantee additional indebtedness, (c) enter into transactions with affiliates, (d) sell or otherwise dispose of assets, including capital stock of subsidiaries, (e) make certain restricted payments or other investments, or (f) pay dividends or make other distributions (including loans and other advances and (iii) limitations, in the case of the Company and any future guarantor (if any), to consolidate, amalgamate or merge with or into, or sell all or substantially all of its assets to, another person.

The indenture governing the 2029 Notes sets forth certain events of default after which the 2029 Notes may be declared immediately due and payable and sets forth certain types of bankruptcy or insolvency events of default involving the Company or its subsidiaries.

The 2029 Notes are guaranteed by certain of the Company’s future wholly-owned domestic subsidiaries (if any) on a senior secured basis. The 2029 Notes and the guarantees (if any), together with any future indebtedness secured on a pari passu basis with the 2029 Notes and the guarantees (if any), are secured by a first priority lien on substantially all of the assets of the Company and the guarantors (if any), subject to certain exceptions.

On or after March 1, 2025, the Company may redeem the 2029 Notes at its option, in whole at any time or in part from time to time, at the following redemption prices (expressed as percentages of principal amount) plus accrued and unpaid interest, to, but excluding, the applicable redemption date (subject to the right of holders of record of the relevant record date to receive interest due on the relevant interest payment date), if redeemed during the following periods: March 1, 2025 to (but excluding) March 1, 2026 - 113.0%; March 1, 2026 to (but excluding) October 1, 2026 - 106.5%; and October 1, 2026 and thereafter - 100.0%. In addition, prior to March 1, 2025, the Company may redeem the 2029 Notes at its option, in whole at any time or in part from time to time, at a redemption price equal to 100% of the principal amount of the 2029 Notes redeemed plus the applicable premium as of, and accrued and unpaid interest to, but excluding, the applicable redemption date (subject to the right of holders of record of the relevant record date to receive interest due on the relevant interest payment date). Notwithstanding the foregoing, at any time and from time to time on or prior to March 1, 2025, the Company may redeem in the aggregate up to 40% of the original aggregate principal amount of the 2029 Notes (calculated after giving effect to the issuance of any PIK payments) with the net proceeds of one or more equity offerings to the extent the net cash proceeds thereof are contributed to the common equity capital of the Company or are used to purchase capital stock (other than disqualified stock) of the Company, at a redemption price of 113.0%, plus accrued and unpaid interest, to, but excluding, the applicable redemption date (subject to the right of holders of record on the relevant record date to receive interest due on the relevant interest payment date), provided at least 60% of the original aggregate principal amount of the 2029 Notes (calculated after giving effect to any PIK payments) remains outstanding after each such redemption.

A schedule of the Company's future maturities for the 2029 Notes with interest components included in principal, is as follows (in thousands):

Fiscal Year	Amount 2029 Notes
2024 through 2028	$ —
2029	166,631
Total expected payments at maturity	166,631
Less unamortized debt issuance costs and debt premium, net	(3,573)
Less amounts related to PIK interest	(31,631)
Net carrying amount	$ 131,427

Note 7. Convertible Senior Notes, Net

In June 2020, the Company issued an aggregate principal of $172.5 million of its 2025 Notes, pursuant to an indenture, in a private offering to qualified institutional buyers. The 2025 Notes will mature on June 15, 2025, unless earlier redeemed or repurchased by the Company or converted. In February 2024, certain of the 2025 Notes were extinguished in connection with the Note Exchange (see Note 6 — Non-convertible Notes, Net).

At issuance, the Company received net proceeds from the 2025 Notes offering of approximately $165.8 million, after deducting the initial purchasers' discount and commission and offering expenses. The Company used approximately $22.5 million of the net proceeds from the 2025 Notes offering to fund the net cost of entering into the capped call transactions described below. The Company intends to use the remainder of the net proceeds for general corporate purposes.

In March 2021, the Company issued an aggregate principal of $287.5 million of its 2028 Notes, pursuant to an indenture, in a private offering to qualified institutional buyers. The 2028 Notes will mature on March 1, 2028, unless earlier redeemed or repurchased by the Company or converted. In February 2024, certain of the 2028 Notes were extinguished in connection with the Note Exchange (see Note 6 — Non-convertible Notes, Net).

At issuance, the Company received net proceeds from the 2028 Notes offering of approximately $278.1 million, after deducting the initial purchasers' discount and commission and offering expenses. The Company used approximately $33.7 million of the net proceeds from the 2028 Notes offering to fund the net cost of entering into the capped call transactions described below. The Company intends to use the remainder of the net proceeds for general corporate purposes.

The 2025 Notes accrue interest at a rate of 3.00% per annum, payable semi-annually in arrears on June 15 and December 15 of each year, beginning on December 15, 2020. The initial conversion rate applicable to the 2025 Notes is 56.2635 shares of common stock per $1,000 principal amount of 2025 Notes (which is equivalent to an initial conversion price of approximately $17.77 per share of the Company's common stock). The 2028 Notes accrue interest at a rate of 1.00% per annum, payable semi-annually in arrears on March 1 and September 1 of each year, beginning on September 1, 2021. The initial conversion rate applicable to the 2028 Notes is 31.4465 shares of common stock per $1,000 principal amount of 2028 Notes (which is equivalent to an initial conversion price of approximately $31.80 per share of the Company's common stock). The conversion rate is subject to adjustment upon the occurrence of certain specified events but will not be adjusted for accrued and unpaid interest. In addition, upon the occurrence of a corporate event, the Company will, in certain circumstances, increase the conversion rate by a number of additional shares for a holder that elects to convert its Convertible Senior Notes in connection with such corporate event.

The 2025 Notes will be redeemable, in whole or in part, at the Company's option at any time, and from time to time, on or after June 20, 2023, and the 2028 Notes will be redeemable, in whole or in part, at the Company's option at any time, and from time to time, on or after March 5, 2025, in each case if the last reported sale price per share of the Company's common stock exceeds 130% of the conversion price then in effect for at least 20 trading days (whether or not consecutive), including the trading day immediately preceding the date on which the Company provides notice of redemption, during any 30 consecutive trading day period ending on, and including, the trading day immediately before the date the Company sends the related redemption notice. In addition, calling any Note for redemption will constitute a make-whole fundamental change with respect to that Note, in which case the conversion rate applicable to the conversion of that Note will be increased in certain circumstances if it is converted after it is called for redemption.

Prior to March 15, 2025, in the case of the 2025 Notes, and December 1, 2027, in the case of the 2028 Notes, the applicable Convertible Senior Notes will be convertible only under the following circumstances:

- During any calendar quarter (and only during such calendar quarter), if the last reported sale price per share of the Company's common stock exceeds 130% of the applicable conversion price on each applicable trading day for at least 20 trading days (whether or not consecutive) in the period of the 30 consecutive trading day period ending on, and including, the last trading day of the immediately preceding calendar quarter;
- During the five business day period after any five consecutive trading day period in which, for each day of that period, the trading price per $1,000 principal amount of Convertible Senior Notes for such trading day was less than 98% of the product of the last reported sale price of the Company's common stock and the applicable conversion rate on such trading day;
- Upon the occurrence of specified corporate transactions; or
- If the Company calls any Convertible Senior Notes for redemption.

On and after March 15, 2025, in the case of the 2025 Notes, and December 1, 2027, in the case of the 2028 Notes, until the close of business on the scheduled trading day immediately preceding the maturity date, holders may convert all or a portion of their Convertible Senior Notes, in multiples of $1,000 principal amount, at any time, regardless of the foregoing circumstances. Upon conversion, the Convertible Senior Notes will be settled, at the Company's election, in cash, shares of the Company's common stock, or a combination of cash and shares of the Company's common stock. It is the Company's current intent to settle conversions of the 2025 Notes and the 2028 Notes through combination settlement, which involves repayment of the principal portion in cash and any excess of the conversion value over the principal amount in shares of its common stock. The conditions allowing holders of either the 2025 Notes or the 2028 Notes to convert were not met as of September 30, 2024.

The Convertible Senior Notes are unsecured and unsubordinated obligations of the Company and will rank senior in right of payment to any of future indebtedness of the Company that is expressly subordinated in right of payment to the Convertible Senior Notes; rank equal in right of payment to any existing and future unsecured indebtedness of the Company that is not so subordinated; be effectively subordinated in right of payment to any secured indebtedness of the Company to the extent of the value of the assets securing such indebtedness; and be structurally subordinated to all existing and future indebtedness and other liabilities and obligations incurred by future subsidiaries of the Company.

If bankruptcy, insolvency, or reorganization occurs with respect to the Company (and not solely with respect to a significant subsidiary of the Company), then the principal amount of, and all accrued and unpaid interest on, all of the 2025 Notes and 2028 Notes then outstanding will immediately become due and payable without any further action or notice by any person. If an event of default (other than bankruptcy, insolvency, or reorganization with respect to the Company and not solely with respect to a significant subsidiary of the Company) occurs and is continuing, then, with the exception of certain reporting events of default, the trustee, by notice to the Company, or noteholders of at least 25% of the aggregate principal amount of 2025 Notes or 2028 Notes, as applicable, then outstanding, by notice to us and the trustee, may declare the principal amount of, and all accrued and unpaid interest on, all of the 2025 Notes or 2028 Notes, as applicable, the outstanding to become due and payable immediately.

The carrying amount of the 2025 Notes is $26.6 million as of September 30, 2024, with principal of $26.7 million, net of unamortized issuance costs of $0.1 million. The 2025 Notes were classified as short term liabilities as of September 30, 2024. The issuance costs related to the 2025 Notes are being amortized to interest expense over the expected life of the 2025 Notes or approximately its five-year term at an effective interest rate of 3.74%. The carrying amount of the 2028 Notes is $276.5 million as of September 30, 2024, with principal of $281.0 million, net of unamortized issuance costs of $4.5 million. The 2028 Notes were classified as long term liabilities as of September 30, 2024. The issuance costs related to the 2028 Notes are being amortized to interest expense over the expected life of the 2028 Notes or approximately its seven-year term at an effective interest rate of 1.45%.

The following tables set forth the amounts recorded in interest expense related to the 2025 Notes as of the dates indicated (in thousands):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2024	2023	2024	2023
Contractual interest expense	$ 201	$ 1,294	$ 1,330	$ 3,881
Amortization of debt issuance costs	51	314	331	942
Total interest and amortization expense	$ 252	$ 1,608	$ 1,661	$ 4,823

The following tables set forth the amounts recorded in interest expense related to the 2028 Notes as of the dates indicated (in thousands):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2024	2023	2024	2023
Contractual interest expense	$ 703	$ 719	$ 2,119	$ 2,156
Amortization of debt issuance costs	323	327	983	978
Total interest and amortization expense	$ 1,026	$ 1,046	$ 3,102	$ 3,134

A schedule of the Company's future maturities for the 2025 and 2028 Notes, is as follows (in thousands):

	Amount	
Fiscal Year	2025 Notes	2028 Notes
2024	$ —	$ —
2025	26,749	—
2026	—	—
2027	—	—
2028	—	281,019
Total principal payments	26,749	281,019
Less unamortized debt issuance costs	(149)	(4,536)
Net carrying amount	$ 26,600	$ 276,483

Capped Call Transactions with Respect to the 2025 Notes and 2028 Notes

In connection with the issuance of the 2025 Notes and 2028 Notes, including the initial purchasers' exercise of the option to purchase additional 2025 Notes and 2028 Notes, the Company entered into capped call transactions with respect to its common stock with certain financial institutions (collectively, the "Counterparties"). The Company paid an aggregate amount of approximately $22.5 million to the Counterparties in connection with the 2025 capped call transactions (the "2025 Capped Calls") and $33.7 million to the Counterparties in connection with the 2028 capped call transactions and (the "2028 Capped Calls" and, together with the 2025 Capped Calls, the "Capped Calls"). The 2025 Capped Calls and 2028 Capped Calls initially covered approximately 9,705,454 shares and 9,040,869 shares of the Company's common stock at a strike price that corresponds to the initial conversion price of the 2025 Notes and the 2028 Notes, respectively. The 2025 Capped Calls and the 2028 Capped Calls are subject to anti-dilution adjustments that are intended to be substantially identical to those in the 2025 Notes and the 2028 Notes, as applicable, and are exercisable upon conversion of the 2025 Notes or the 2028 Notes, as applicable. The Capped Calls are subject to adjustment upon the occurrence of specified extraordinary events affecting the Company, including merger events, tender offer and announcement events. In addition, the Capped Calls are subject to certain specified additional disruption events that may give rise to a termination of the Capped Calls, including nationalization, insolvency or delisting, changes in law, failures to deliver, insolvency filings and hedging disruptions. The 2025 Capped Calls settle in components commencing on April 16, 2025 with the last component scheduled to expire on June 12, 2025. The 2028 Capped Calls settle in components commencing on December 31, 2027 with the last component scheduled to expire on February 28, 2028.

The cap price of the 2025 Capped Call is initially $27.88 per share, which represents a premium of 100.0% over the closing price of the Company's common stock of $13.94 per share on June 10, 2020, and is subject to certain adjustments under the terms of the capped call transactions. The cap price of the 2028 Capped Call is initially $48.00 per share, which represents a premium of 100.0% over the closing price of the Company's common stock of $24.00 per share on March 3, 2021, and is subject to certain adjustments under the terms of the capped call transactions. The Company expects to receive from the Counterparties a number of shares of the Company's common stock or, at the Company's election (subject to certain conditions), cash, with an aggregate market value (or, in the case of cash settlement, in an amount) approximately equal to the product of such excess times the number of shares of the Company's common stock relating to the 2025 and 2028 Capped Calls being exercised.

These Capped Call instruments meet the conditions outlined in ASC 815-40 to be classified in stockholders' equity, are not accounted for as derivatives, and are not subsequently remeasured as long as the conditions for equity classification continue to be met. The Company recorded a reduction to additional paid-in capital of approximately $22.5 million and $33.7 million related to the premium payments for the 2025 Capped Call and 2028 Capped Call transactions.

In connection with the Note Exchange, the Company received $0.4 million in cash in connection with settling certain Capped Calls. After giving effect to such settlements, the 2025 Capped Calls and 2028 Capped Calls outstanding cover approximately 1,504,992 and 8,837,095 shares of the Company's common stock, respectively. As the Capped Calls were equity classified, the proceeds from settlement of these Capped Calls were recorded to additional paid in capital.

Note 8. Share-based Compensation Plans

2019 Equity Incentive Plan

In connection with the Company's initial public offering, the Company adopted the 2019 Equity Incentive Plan (the "2019 Plan"). The 2019 Plan allows the Company to grant stock options, stock appreciation rights, restricted stock, restricted stock units and performance awards to participants. Subject to the terms and conditions of the 2019 Plan, the initial number of shares authorized for grants under the 2019 Plan is 8,000,000. These available shares increase annually by an amount equal to the lesser of 8,000,000 shares, 5% of the number of shares of the Company's common stock outstanding on the immediately preceding December 31, or the number of shares determined by the Company's board of directors.

In February 2022, the Company granted PSUs with financial performance targets to certain employees of the Company. The number of units issued will depend on the achievement of financial metrics relative to the approved performance targets, and can range from 0% to 150% of the target amount. The PSUs are subject to continuous service with the Company and will vest after approximately three years. The PSUs are measured using the fair value at the date of grant. The compensation expense associated with PSUs is recognized based on the estimated number of shares that the Company expects will vest and may be adjusted based on interim estimates of performance against the performance condition. During the three and nine months ended September 30, 2024, the Company has not recorded stock-based compensation expense as attainment of the financial performance targets is not considered probable.

In March 2023, the Company granted PSUs under the 2019 Plan subject to the achievement of both market and service conditions to certain employees of the Company. The number of units vested will depend on the achievement of approved market conditions and continuous service with the Company. The PSUs are eligible to vest in three tranches over a five-year performance period. The PSUs are measured using the Monte Carlo simulation to obtain the fair value at the date of grant based on the probability that the market conditions will be met. The compensation expense associated with the PSUs is based on the fair value and is recognized over the requisite service period. The compensation expense will be recognized regardless of whether the market condition is ever satisfied, provided the requisite service period is satisfied.

In March 2024, the Company granted PSUs with financial performance targets to certain employees of the Company. The number of units issued will depend on the achievement of financial metrics relative to the approved performance targets, and can range from 0% to 200% of the target amount. The PSUs are subject to continuous service with the Company and will vest after approximately three years. The PSUs are measured using the fair value at the date of grant. The compensation expense associated with PSUs is recognized based on the estimated number of shares that the Company expects will vest and may be adjusted based on interim estimates of performance against the performance condition.

As of September 30, 2024, there was $36.4 million of total unrecognized compensation expense related to RSUs and PSUs, which are expected to be recognized over the remaining weighted-average vesting period of approximately 2.0 years. As of September 30, 2024, there was no unrecognized compensation expense related to options.

Inducement Grants

The Company granted stock-based awards outside of the 2019 Plan to the certain executives. These awards were granted as inducements material to their commencement of employment and entry into offer letters with the Company, in accordance with Nasdaq Listing Rule 5635(c)(4).

The inducement pool consists of a total of 5,625,000 shares of the Company's common stock, which includes (a) 2,050,000 shares of PSUs that are eligible to vest based on market and service conditions in four tranches over a five-year performance period and (b) 3,575,000 shares of RSUs generally subject to the same terms and conditions as grants that are made under the 2019 Plan. As of September 30, 2024, the unrecognized expense for the PSUs is $2.3 million and the unrecognized expense for RSUs is $7.5 million.

Employee Stock Purchase Plan

In connection with the Company's initial public offering, the Company adopted the Employee Stock Purchase Plan (the "ESPP"). The Employee Stock Purchase Plan permits employees to purchase shares of common stock during six-month offering periods at a purchase price equal to the lesser of (1) 85% of the fair market value of a share of common stock on the first business day of such offering period and (2) 85% of the fair market value of a share of common stock on the last business day of such offering period. The initial number of shares of common stock that could be issued under the employee stock purchase plan was 1,750,000 shares. These available shares increase by an amount equal to the lesser of 1,750,000 shares, 1% of the number of shares of common stock outstanding on the immediately preceding December 31, or the number of shares determined by the Company's board of directors.

There were 333,753 and 469,199 shares purchased by employees under the ESPP during the nine months ended September 30, 2024 and 2023, respectively. As of September 30, 2024, total unrecognized compensation costs related to the purchase rights under the ESPP was immaterial.

Stock-based Compensation

Total stock-based compensation expense by function was as follows (in thousands):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2024	2023	2024	2023
Marketing	$ 225	$ 382	$ 707	$ 1,181
Operations and technology	2,533	3,115	7,527	10,107
Selling, general and administrative	5,000	5,039	14,346	15,005
Total	$ 7,758	$ 8,536	$ 22,580	$ 26,293

During the three months ended September 30, 2024 and 2023, the Company capitalized $0.1 million and $0.2 million of stock-based compensation expense to proprietary software, respectively. During the nine months ended September 30, 2024 and 2023, the Company capitalized $0.4 million and $0.6 million of stock-based compensation expense to proprietary software, respectively.

Note 9. Leases

The Company leases its corporate offices, retail spaces and authentication centers under various noncancelable operating leases with terms ranging from one year to fifteen years.

The Company recorded operating lease costs of $5.2 million and $5.1 million for the three months ended September 30, 2024 and 2023, respectively, and $15.6 million and $17.9 million for the nine months ended September 30, 2024 and 2023, respectively. The Company also incurred $1.3 million and $1.2 million of variable lease costs for the three months ended September 30, 2024 and 2023, respectively, and $4.2 million and $3.8 million of variable lease costs for the nine months ended September 30, 2024 and 2023, respectively. The variable lease costs are comprised primarily of the Company's proportionate share of operating expenses, property taxes and insurance.

Due to the office and store closures in the nine months ended September 30, 2023, the Company reviewed its right-of-use assets for impairment. Impairment losses are measured and recorded for the excess of carrying value over its fair value, estimated based on expected future cash flows using discount rate and other quantitative and qualitative factors. As a result, the Company recorded $26.3 million related to the impairment of certain office and store right-of-use assets, for the nine months ended September 30, 2023. No impairment charges were recorded during the nine months ended September 30, 2024. The impairment charges are included in restructuring charges in the condensed statements of operations.

During the three months ended September 30, 2023, the Company entered into agreements to amend certain of its operating leases. The Company treated the lease termination amendments as lease modifications for accounting purposes as of the applicable effective dates of such terminations. The Company recorded a net gain on the lease terminations of $1.2 million and $0.7 million during the three and nine months ended September 30, 2023, respectively. The net gain on lease terminations is included in restructuring charges in the condensed statement of operations.

Maturities of operating lease liabilities by fiscal year for the Company's operating leases are as follows (in thousands):

Fiscal Year	Amount
Remainder of 2024	$ 7,326
2025	28,735
2026	28,496
2027	24,542
2028	21,829
Thereafter	20,200
Total future minimum payments	$ 131,128
Less: Imputed interest	(17,367)
Present value of operating lease liabilities	$ 113,761

Supplemental cash flow information related to the Company's operating leases are as follows (in thousands):

	Nine Months Ended September 30,	
	2024	2023
Operating cash flows used for operating leases	$ 20,690	$ 27,028
Operating lease assets obtained in exchange for operating lease liabilities (including remeasurement of right-of-use assets and lease liabilities due to lease modifications)	$ 4,074	$ 6,006

The weighted average remaining lease term and discount rate for the Company's operating leases are as follows:

	September 30, 2024
Weighted average remaining lease term	4.8 years
Weighted average discount rate	6.2 %

The Company has leases for certain vehicles and equipment that are classified as finance leases. The finance lease right-of-use asset and finance lease liabilities for these vehicle and equipment leases are immaterial as of September 30, 2024 and December 31, 2023.

Note 10. Restructuring

In February 2023, the Company announced a savings plan to reduce its real estate presence and operating expenses through closure of certain retail and office locations and workforce reduction.

For the nine months ended September 30, 2023, the Company recognized $37.4 million in restructuring charges which consisted of right-of-use asset impairment charge of $26.3 million, leasehold improvements impairment charge of $7.5 million, employee severance of $3.0 million, and other related charges of $1.3 million, partially offset by a $0.7 million gain on lease terminations. The Company recorded an immaterial amount of restructuring charges for the nine months ended September 30, 2024. The restructuring related charges were recorded on a separate line item in the Company's condensed statement of operations.

Note 11. Commitments and Contingencies

Fire at Secaucus, New Jersey Authentication Center

In May 2024, the Company experienced a fire at one of its authentication centers in Secaucus, New Jersey. The damage was primarily limited to fixed assets, leasehold improvements, supplies, and consigned and owned inventories. The Company maintains property, cargo, general liability and business interruption insurance coverage.

As of September 30, 2024, discussions with the insurance company are still ongoing. Based on the provisions of the Company's insurance policies, the Company recorded insurance recoveries for fire related costs for which recovery was deemed probable.

As of September 30, 2024, the Company recorded an insurance receivable of $3.8 million, reported within prepaid and other current assets in the condensed balance sheet and related insurance recovery gain within Operations and Technology on the condensed statement of operations, partially offsetting applicable losses related to the fire. During the nine months ended September 30, 2024, the Company recorded a net loss of $0.3 million related to the fire.

As of September 30, 2024, the Company had received, in aggregate, advance payments from insurers totaling approximately $2.6 million towards its claims to cover immediate impacts of the fire. $2.1 million of the payments are included within net cash flows from operating activities and $0.5 million of the payments are included within net cash flows from investing activities in the condensed statements of cash flows due to the nature of the advance insurance payments.

Noncancelable Purchase Commitments

The Company has commitments for cloud services and other services in the ordinary course of business with varying expiration terms through 2027. As of September 30, 2024, there were no material changes to the Company's noncancelable purchase commitments disclosed in the financial statements in the Annual Report on Form 10-K.

Contingencies

From time to time, the Company is subject to, and it is presently involved in, litigation and other legal proceedings and from time to time, the Company receives inquiries from government agencies. Accounting for contingencies requires the Company to use judgment related to both the likelihood of a loss and the estimate of the amount or range of loss. The Company records a loss contingency when it is probable that a liability has been incurred and the amount of the loss can be reasonably estimated. The Company discloses material contingencies when a loss is not probable but reasonably possible.

On November 14, 2018, Chanel, Inc. sued the Company in the U.S. District Court for the Southern District of New York. The Complaint alleged federal and state law claims of trademark infringement, unfair competition, and false advertising. On February 1, 2019, Chanel, Inc. filed its First Amended Complaint that included substantially similar claims against the Company. On March 4, 2019, the Company filed a Motion to Dismiss the First Amended Complaint, which was granted in part and dismissed in part on March 30, 2020. The surviving claims against the Company include trademark infringement under 15 U.S.C. § 1114, false advertising under 15 U.S.C. § 1125, and unfair competition under New York common law. On May 29, 2020, the Company filed its Answer to the Amended Complaint. On November 3, 2020, the Company sought leave to amend its Answer to assert counterclaims against Chanel, Inc. for violations of the Sherman Act, 15 U.S.C. §§ 1 & 2, the Donnelly Act, N.Y. Gen. Bus. Law. § 340, and New York common law. The motion for leave to amend was granted on February 24, 2021. On February 25, 2021, the Company filed its First Amended Answer, Affirmative Defenses and Counterclaims against Chanel. The Company's Counterclaims allege violations of the Sherman Act, 15 U.S.C. §§ 1 & 2, the Donnelly Act, N.Y. Gen. Bus. Law. § 340, and New York common law. On March 18, 2021, Chanel moved to dismiss the Company's Counterclaims and moved to strike the Company's unclean hands affirmative defense. Decisions on Chanel's motion to dismiss and motion strike are pending. The parties agreed to a stay in April 2021 to engage in settlement discussions. After several mediation sessions, the parties were unable to reach a resolution, and the stay was lifted in November 2021. Chanel then sought a partial stay of discovery on the Company's counterclaims and unclean hands defense while Chanel's motion to dismiss and strike those claims are pending, and on March 10, 2022, the Court granted Chanel's request. Since then, the parties have continued to engage in fact discovery regarding Chanel's counterfeiting and false advertising claims against the Company. Fact discovery was scheduled to be completed by August 15, 2023, however, on July 19, 2023, the Court ordered a stay of the case at the parties' request to enable the parties to attempt mediation again. The mediation scheduled to begin on October 24, 2023 was postponed, and the parties are currently engaged in settlement discussions with a mediator. The final outcome of this litigation, including our liability, if any, with respect to Chanel's claims, is uncertain. An unfavorable outcome in this or similar litigation could adversely affect the Company's business and could lead to other similar lawsuits. The Company is not able to predict or reasonably estimate the ultimate outcome or possible losses relating to this claim.

Beginning on September 10, 2019, purported shareholder class action complaints were filed against the Company, its officers and directors and the underwriters of its IPO in the San Mateo Superior Court, Marin County Superior Court, and the United States District Court for the Northern District of California. On July 27, 2021, the Company reached an agreement in principle to settle the shareholder class action. On November 5, 2021, plaintiff filed the executed stipulation of settlement and motion for preliminary approval of the settlement with the federal court. On March 24, 2022, the court entered an order preliminarily approving the settlement. On July 28, 2022, the court entered an order finally approving the settlement and dismissing the case. The financial terms of the stipulation of settlement provide that the Company will pay $11.0 million within thirty (30) days of the later of preliminary approval of the settlement or plaintiff's counsel providing payment instructions. The Company paid the settlement amount on March 29, 2022 with available resources and recorded approximately $11.0 million for the year ended December 31, 2021 under our Operating expenses as a Legal settlement. One of the plaintiffs in the Marin County case opted out of the federal settlement and is pursuing the claim in Marin County Superior Court. The stay of the state court case has been lifted, and the opt out plaintiff filed an amended complaint on October 31, 2022 alleging putative class claims under the Securities Act of 1933 (the "Securities Act") on behalf of the two shareholders who opted out of the settlement and those who purchased stock from November 21, 2019 through March 9, 2020, based on purported new revelations. The claims are for alleged violations of Sections 11 and 15 of the Securities Act. On February 23, 2024, plaintiff filed a motion for class certification, which motion remains pending. Merits discovery is stayed in the case until the motion for class certification is decided. While the Company intends to defend vigorously against this litigation, there can be no assurance that the Company will be successful in its defense. For this reason, the Company cannot currently estimate the loss or range of possible losses it may experience in connection with this litigation.

Indemnifications

In the ordinary course of business, the Company may provide indemnifications of varying scope and terms to vendors, directors, officers and other parties with respect to certain matters including, but not limited to, losses arising out of the breach of such agreements, intellectual property infringement claims made by third parties and other liabilities relating to or arising from the Company's various services, or its acts or omissions. The Company has not incurred any material costs as a result of such indemnifications and have not accrued any liabilities related to such obligations in its financial statements.

Note 12. Income Taxes

The Company's provision for income taxes were immaterial for the three and nine months ended September 30, 2024 and 2023.

The Company maintained a full valuation allowance of $292.3 million against its gross deferred tax assets which were $319.4 million as of September 30, 2024. The deferred tax assets were primarily comprised of federal and state tax net operating loss carryforwards. Utilization of the net operating loss carryforwards may be subject to annual limitation due to historical or future ownership percentage change rules provided by the Internal Revenue Code of 1986, and similar state provisions. The annual limitation may result in the expiration of certain net operating loss carryforwards before their utilization.

As of September 30, 2024, the Company had unrecognized tax benefits under ASC 740 Income Taxes of $3.1 million and no applicable interest. There were no unrecognized tax benefits that, if recognized, would affect the Company's effective tax rate as of September 30, 2024. The Company's policy is to account for interest and penalties related to uncertain tax positions as a component of income tax provision. The Company does not anticipate that the amount of unrecognized tax benefits will significantly increase or decrease within the next twelve months. Due to historical losses, all years are open to examination and adjustment by the taxing authorities.

Note 13. Net Loss Per Share Attributable to Common Stockholders

A reconciliation of the numerator and denominator used in the calculation of the basic and diluted net loss per share attributable to common stockholders is as follows (in thousands, except share and per share data):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2024	2023	2024	2023
Numerator				
Net loss attributable to common stockholders, basic	$ (17,938)	$ (22,949)	$ (65,747)	$ (146,779)
Gain from change in fair value of warrants	(744)	—	—	—
Net loss attributable to common stockholders, diluted	$ (18,682)	$ (22,949)	$ (65,747)	$ (146,779)
Denominator				
Weighted-average common shares outstanding used to calculate net loss per share attributable to common stockholders, basic	109,016,060	102,648,790	107,043,946	101,087,793
Effect of dilutive liability classified warrants	3,402,691	—	—	—
Weighted-average common shares outstanding used to calculate net loss per share attributable to common stockholders, diluted	112,418,751	102,648,790	107,043,946	101,087,793
Net loss per share attributable to common stockholders:				
Basic	$ (0.16)	$ (0.22)	$ (0.61)	$ (1.45)
Diluted	$ (0.17)	$ (0.22)	$ (0.61)	$ (1.45)

The following securities were excluded from the computation of diluted net loss per share attributable to common stockholders for the periods presented, because including them would have been anti-dilutive (on an as-converted basis):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2024	2023	2024	2023
Options to purchase common stock	1,029,551	1,138,465	1,029,551	1,138,465
Restricted stock units	16,152,762	14,191,427	16,152,762	14,191,427
Estimated shares issuable under the Employee Stock Purchase Plan	114,733	373,262	114,733	373,262
Assumed conversion of the Convertible Senior Notes	10,342,056	18,746,323	10,342,056	18,746,323
Warrants to purchase common stock	—	—	7,894,737	—
Total	27,639,102	34,449,477	35,533,839	34,449,477

Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations.

The following discussion of our financial condition and results of operations should be read together with our condensed financial statements and related notes thereto included elsewhere in this Quarterly Report on Form 10-Q and our audited financial statements and related notes and our Annual Report on Form 10-K filed with the Securities and Exchange Commission on March 1, 2024. The following discussion contains forward-looking statements that reflect our plans, estimates and beliefs. See the discussion under "Note Regarding Forward-Looking Statements" elsewhere in this Quarterly Report on Form 10-Q for more information. Our actual results could differ materially from those discussed in the forward-looking statements. Factors that could cause or contribute to these differences include those discussed below and particularly in the section titled "Risk Factors" and elsewhere in this Quarterly Report on Form 10-Q. Our historical results are not necessarily indicative of the results that may be expected for any period in the future, and our interim results are not necessarily indicative of the results we expect for the full calendar year or any other period.

Overview

We are the world's largest online marketplace for authenticated resale luxury goods. We are revolutionizing luxury resale by providing an end-to-end service that unlocks supply from consignors and creates a trusted, curated online marketplace for buyers globally. Since our inception in 2011, we have cultivated a loyal and engaged consignor and buyer base through our investments in our technology platform, logistics infrastructure and people. We offer a wide selection of authenticated, primarily pre-owned luxury goods on our online marketplace bearing the brands of thousands of luxury and premium designers. We offer products across multiple categories including women's and men's fashion, fine jewelry and watches. We have built a vibrant online marketplace that we believe expands the overall luxury market, promotes the recirculation of luxury goods and contributes to a more sustainable world.

We have transformed the luxury consignment experience by removing the friction and pain points inherent in the traditional consignment model. For consignors, we offer concierge at-home consultation and pickup as well as virtual consultations via online face-to-face platforms. Consignors may also drop off items at our luxury consignment offices. Our retail stores provide an alternative location to drop off consigned items and an opportunity to interact with our authentication experts. Consignors may also utilize our complimentary shipping directly to our authentication centers. We leverage our proprietary transactional database and market insights from approximately 42.7 million item sales since our inception to deliver optimal pricing and rapid sell-through. For buyers, we offer highly coveted and exclusive authenticated pre-owned luxury goods at attractive values, as well as a high-quality experience befitting the products we offer. Our online marketplace is powered by our proprietary technology platform, including consumer facing applications and purpose-built software that supports our complex, single-SKU inventory management system.

The substantial majority of our revenue is generated by consignment sales. We also generate revenue from other services and direct sales.

- ***Consignment revenue.*** When we sell goods through our online marketplace or retail stores on behalf of our consignors, we retain a percentage of the proceeds, which we refer to as our take rate. Take rates vary depending on the total value of goods sold through our online marketplace on behalf of a particular consignor as well as the category and price point of the items. In the three months ended September 30, 2024 and 2023, our overall take rate on consigned goods was 38.6% and 38.1%, respectively. The increase in our take rate was due to the larger sales mix of higher take rate categories such as women's apparel. Additionally, we earn revenue from our subscription program, *First Look*, in which we offer buyers early access to the items we sell in exchange for a monthly fee.
- ***Direct revenue.*** When we accept out of policy returns from buyers, or when we make direct purchases from businesses and consignors, we take ownership of goods and retain 100% of the proceeds when the goods subsequently sell through our online marketplace or retail stores.
- ***Shipping services revenue.*** When we deliver purchased items to our buyers, we charge shipping fees to buyers for the outbound shipping and handling services. We also generate shipping services revenue from the shipping fees for consigned products returned by our buyers to us within policy. Shipping services revenue excludes the effect of buyer incentives and sales tax.

We generate revenue from orders processed through our website, mobile app and retail stores. Our omni-channel experience enables buyers to purchase anytime and anywhere. We have a global base of more than 37.8 million members as of September 30, 2024. We count as a member any user who has registered an email address on our website or downloaded our mobile app, thereby agreeing to our terms of service.

Through September 30, 2024, we have cumulatively paid more than $4.6 billion in commissions to our consignors. Our gross merchandise value ("GMV") increased by 6% to $433.1 million from $407.6 million in the three months ended September 30, 2024 and 2023, respectively. Our GMV increased by 4% to $1,325.9 million from $1,275.3 million in the nine months ended September 30, 2024 and 2023, respectively. Additionally, our net merchandise value ("NMV") increased by 11% to $335.2 million from $302.9 million in the three months ended September 30, 2024 and 2023, respectively, and by 7% to $999.4 million from $934.6 million in the nine months ended September 30, 2024 and 2023, respectively. Our total revenue increased by 11% to $147.8 million from $133.2 million in the three months ended September 30, 2024 and 2023, respectively, and increased by 8% to $436.5 million from $405.9 million in the nine months ended September 30, 2024 and 2023, respectively. In the three months ended September 30, 2024 and 2023, our gross profit was $110.7 million and $94.1 million, respectively, representing an increase of 18%. In the nine months ended September 30, 2024 and 2023, our gross profit was $325.5 million and $270.2 million, respectively, representing an increase of 20%.

Factors Affecting Our Performance

To analyze our business performance, determine financial forecasts and help develop long-term strategic plans, we focus on the factors described below. While each of these factors presents significant opportunity for our business, collectively, they also pose important challenges that we must successfully address in order to sustain our growth, improve our operating results and achieve and maintain our profitability.

Consignors and Buyers

Consignor growth and retention. We grow our sales by increasing the supply of luxury goods offered through our consignment online marketplace. We grow our supply both by attracting new consignors and by creating lasting engagement with existing consignors. We generate leads for new consignors principally through our advertising activity. We convert those leads into active consignors through the activities of our sales professionals, who are trained and incentivized to identify and source high-quality, coveted luxury goods from consignors. Our sales professionals form a consultative relationship with consignors and deliver a high-quality, rapid consigning experience. Our existing relationships with consignors allow us to unlock valuable supply across multiple categories, including women's fashion, men's fashion, jewelry and watches. Using artificial intelligence to assist our pricing team, we leverage our proprietary transactional database and market insights based on more than 42.7 million item sales since inception to deliver consignors optimal pricing and rapid sell-through.

Our growth has been driven in significant part by repeat sales by existing consignors concurrent with growth of our consignor base. The percentage of GMV from repeat consignors in the three months ended September 30, 2024 was 85% as compared to 83% for the three months ended September 30, 2023.

Buyer growth and retention. We grow our business by attracting and retaining buyers. We attract and retain buyers by offering highly coveted, authenticated, pre-owned luxury goods at attractive values and delivering a high-quality, luxury experience. We measure our success in attracting and retaining buyers by tracking buyer satisfaction and purchasing activity over time. We have experienced higher than average buyer satisfaction, as evidenced by our buyer net promoter score of 51 in 2023, and compared to our online shopping industry average of 45 according to NICE Satmetrix U.S. Consumer 2023 data. If we fail to continue to attract and retain our buyer base to our online marketplace, our operating results would be adversely affected.

We believe there is substantial opportunity to grow our business by having buyers also become consignors and vice versa. As of September 30, 2024, 15% of our buyers during the last twelve months had become consignors at any point in that time, and 48% of our consignors during the last twelve months had become buyers at any point in that time. We believe our updated method of measuring buyers who have become consignors and vice versa more accurately reflects the flywheel that enhances the network effect of our online marketplace. If we fail to continue to attract and retain our buyer base to our online marketplace, our operating results would be adversely affected.

Scaling operations and technology. To support the future growth of our business, we continue to invest in physical infrastructure, talent and technology. We principally conduct our intake, authentication, merchandising and fulfillment operations in our leased authentication centers located in Arizona and New Jersey comprising an aggregate of approximately 1.4 million square feet of space. We also operate retail stores in several geographies. In addition to scaling our physical infrastructure, growing our single-SKU business operations requires that we attract, train and retain highly-skilled personnel for purposes of authentication, copywriting, merchandising, pricing and fulfilling orders. We have invested substantially in technology to automate our operations and support growth, including proprietary machine learning technology to support efficiency and quality. We continue to strategically invest in technology, as innovation positions us to scale and support growth into the future.

Seasonality. Historically, we have observed trends in seasonality of supply and demand in our business. Specifically, our supply increases in the third and fourth quarters, and our demand increases in the fourth quarter. As a result of this seasonality, we typically see stronger AOV and more rapid sell-through in the fourth quarter.

Key Financial and Operating Metrics

The key operating and financial metrics that we use to assess the performance of our business are set forth below for the three and nine months ended September 30, 2024 and 2023.

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2024	2023	2024	2023
	(In thousands, except AOV and percentages)			
GMV	$ 433,074	$ 407,608	$ 1,325,929	$ 1,275,315
NMV	$ 335,191	$ 302,912	$ 999,428	$ 934,635
Consignment revenue	$ 116,908	$ 102,852	$ 345,270	$ 302,072
Direct revenue	$ 15,623	$ 17,356	$ 45,056	$ 63,196
Shipping services revenue	$ 15,224	$ 12,964	$ 46,163	$ 40,663
Number of orders	829	794	2,489	2,474
Take rate	38.6 %	38.1 %	38.5 %	37.4 %
Active buyers [(1)]	389	364	795	755
AOV	$ 522	$ 513	$ 533	$ 515

(1) During the three months ended June 30, 2024, we updated active buyers to represent buyers who purchased goods through our online marketplace during the period presented. Active buyers for the nine months ended September 30, 2024 were buyers who purchased goods during the 9 months ended. Previously we had measured buyers who purchased goods during the 12 months ended on the last day of the period presented.

GMV

GMV represents the total amount paid for goods across our online marketplace in a given period. We do not reduce GMV to reflect product returns or order cancellations. GMV includes amounts paid for both consigned goods and our inventory net of platform-wide discounts and excludes the effect of buyer incentives, shipping fees and sales tax. Platform-wide discounts are made available to all buyers on the online marketplace, and impact commissions paid to consignors. Buyer incentives apply to specific buyers and consist of coupons or promotions that offer credits in connection with purchases on our platform. In addition to revenue, we believe this is an important measure of the scale and growth of our online marketplace and a key indicator of the health of our consignor ecosystem. We monitor trends in GMV to inform budgeting and operational decisions to support and promote growth in our business and to monitor our success in adapting our business to meet the needs of our consignors and buyers. While GMV is the primary driver of our revenue, it is not a proxy for revenue or revenue growth (see Note 2—Summary of Significant Accounting Policies—Revenue Recognition—Consignment Revenue).

NMV

NMV represents the value of sales from both consigned goods and our inventory net of platform-wide discounts less product returns and order cancellations and excludes the effect of buyer incentives, shipping fees and sales tax. We believe NMV is a supplemental measure of the scale and growth of our online marketplace. Like GMV, NMV is not a proxy for revenue or revenue growth.

Consignment Revenue

Consignment revenue is generated from the sale of pre-owned luxury goods through our online marketplace and retail stores on behalf of consignors. We retain a portion of the proceeds received, which we refer to as our take rate. We recognize consignment revenue, net of allowances for product returns, order cancellations, buyer incentives and adjustments. We also generate revenue from subscription fees paid by buyers for early access to products.

Direct Revenue

Direct revenue is generated from the sales of company-owned inventory. We recognize direct revenue upon shipment of the goods sold, based on the gross purchase price net of allowances for product returns, buyer incentives and adjustments.

Shipping Services Revenue

Shipping services revenue is generated from shipping fees we charge to buyers for outbound shipping and handling activities related to delivering purchased items to our buyers. We also generate shipping services revenue from the shipping fees for consigned products returned by our buyers to us within policy. We recognize shipping services revenue over time as the shipping activity occurs. Shipping services revenue excludes the effect of buyer incentives and sales tax.

Number of Orders

Number of orders means the total number of orders placed across our online marketplace and retail stores in a given period. We do not reduce number of orders to reflect product returns or order cancellations.

Take Rate

Take rate is a key driver of our revenue and provides comparability to other marketplaces. The numerator used to calculate our take rate is equal to net consignment sales and the denominator is equal to the numerator plus consignor commissions. Net consignment sales represent the value of sales from consigned goods net of platform-wide discounts less consignor commission, product returns and order cancellations. We exclude direct revenue from our calculation of take rate because direct revenue represents the sale of inventory owned by us, which costs are included in cost of direct revenue. Our take rate reflects the high level of service that we provide to our consignors across multiple touch points and the consistently high velocity of sales for their goods. In November 2022, we updated our take rate structure with the goals of optimizing take rate, limiting consignment of lower value items, and increasing supply of higher value items.

Our take rate structure is primarily based on the category and the price point of the sold items. For example, under the updated take rate structure, consignors can earn 20% commission on all sold items under $100, and up to 90% commission on watches sold for over $7,500. We launched a pricing tool for our consignors that provides detail on commission rates for specific categories and other aspects of the take rate structure. Consignors are eligible to receive additional commissions based on total net sales under an added tiered commission structure. Management assesses changes in take rates by monitoring the volume of GMV and take rate across each discrete commission grouping, encompassing commission tiers and exceptions.

Active Buyers

Active buyers include buyers who purchased goods through our online marketplace during the periods presented, irrespective of returns or cancellations. We believe this metric reflects scale, brand awareness, buyer acquisition and engagement.

Average Order Value ("AOV")

Average order value ("AOV") means the average value of all orders placed across our online marketplace and retail stores, excluding the effect of buyer incentives, shipping fees and sales taxes. Our focus on luxury goods across multiple categories drives a consistently strong AOV. Our AOV reflects both the average price of items sold as well as the number of items per order. Our AOV is a key driver of our operating leverage.

Non-GAAP Financial Measures

Adjusted EBITDA

Adjusted EBITDA is a key performance measure that our management uses to assess our operating performance. Because Adjusted EBITDA facilitates internal comparisons of our historical operating performance on a more consistent basis, we use this measure as an overall assessment of our performance, to evaluate the effectiveness of our business strategies and for business planning purposes and for incentive and compensation purposes. Adjusted EBITDA may not be comparable to similarly titled metrics of other companies.

Adjusted EBITDA means GAAP net loss before interest income, interest expense, other (income) expense net, provision for income taxes, and depreciation and amortization, further adjusted to exclude stock-based compensation, payroll taxes on employee stock transactions, legal settlement charges, restructuring charges, gain on extinguishment of debt, change in fair value of warrant liability and certain one-time expenses. Adjusted EBITDA provides a basis for comparison of our business operations between current, past and future periods by excluding items that we believe are not indicative of our core operating performance. Adjusted EBITDA is a non-GAAP measure. Adjusted EBITDA has certain limitations as the measure excludes the impact of certain expenses that are included in our statements of operations that are necessary to run our business and should not be considered as an alternative to net loss or any other measure of financial performance calculated and presented in accordance with GAAP.

In particular, the exclusion of certain expenses in calculating Adjusted EBITDA facilitates operating performance comparisons on a period-to-period basis and, in the case of exclusion of the impact of stock-based compensation and the related employer payroll tax expense on employee stock transactions, excludes an item that we do not consider to be indicative of our core operating performance. Investors should, however, understand that stock-based compensation and the related employer payroll tax expense will be a significant recurring expense in our business and an important part of the compensation provided to our employees. Accordingly, we believe that Adjusted EBITDA provides useful information to investors and others in understanding and evaluating our operating results in the same manner as our management and board of directors.

The following table provides a reconciliation of net loss to Adjusted EBITDA (in thousands):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2024	2023	2024	2023
Adjusted EBITDA Reconciliation:				
Net loss	$ (17,938)	$ (22,949)	$ (65,747)	$ (146,779)
Depreciation and amortization	8,270	7,744	24,806	23,530
Interest income	(1,940)	(2,260)	(6,272)	(6,717)
Interest expense	5,948	2,673	15,468	8,018
Provision for income taxes	72	47	178	247
EBITDA	(5,588)	(14,745)	(31,567)	(121,701)
Stock-based compensation	7,758	8,536	22,580	26,293
Payroll taxes expense on employee stock transactions	76	74	250	142
Legal settlement	—	—	600	1,100
Restructuring charges (1)	—	(856)	196	37,396
Gain on extinguishment of debt (2)	—	—	(4,177)	—
Change in fair value of warrant liability (3)	(744)	—	9,209	—
One time expenses (4)	822	—	1,211	159
Adjusted EBITDA	$ 2,324	$ (6,991)	$ (1,698)	$ (56,611)

(1) Restructuring charges for the three and nine months ended September 30, 2023 consists of impairment of right-of-use assets and property and equipment, employee severance charges, gain on lease terminations, and other charges, including legal and transportation expenses. See "Note 10 - Restructuring" in the notes to the unaudited financial statements for disclosure regarding the restructuring expenses incurred.

(2) The gain on extinguishment of debt for the nine months ended September 30, 2024 reflects the difference between the carrying value of the Exchanged Notes and the fair value of the 2029 Notes.

(3) The change in fair value of warrant liability for the three and nine months ended September 30, 2024 reflects the remeasurement of the warrants issued by the Company in connection with the Note Exchange in February 2024.

(4) One time expenses for the three and nine months ended September 30, 2024 consists of vendor services settlement and estimated losses, net of estimated insurance recoveries related to the fire at one of our New Jersey authentication centers. See "Note 11 - Commitments and Contingencies" in the notes to the unaudited financial statements for disclosure regarding the event. One time expenses for the nine months ended September 30, 2023 consists of retention bonuses for certain executives incurred in connection with our founder's resignation on June 6, 2022.

Components of our Operating Results

Revenue

Our revenue is comprised of consignment revenue, direct revenue and shipping services revenue.

- *Consignment revenue.* We generate the substantial majority of our revenue from the sale of pre-owned luxury goods through our online marketplace and retail stores on behalf of consignors. For consignment sales, we retain a percentage of the proceeds received, which we refer to as our take rate. We recognize consignment revenue, net of allowances for product returns, order cancellations, buyer incentives and adjustments. Additionally, we generate revenue from subscription fees paid by buyers for early access to products, but to date our subscription revenue has not been material.
- *Direct revenue.* We generate direct revenue from the sale of items that we own, which we refer to as our inventory. We generally acquire inventory when we accept out of policy returns from buyers, and when we make direct purchases from businesses and consignors. We recognize direct revenue upon shipment based on the gross purchase price paid by buyers for goods, net of allowances for product returns, buyer incentives and adjustments.
- *Shipping services revenue.* We generate shipping services revenue from the outbound shipping and handling fees we charge when delivering purchased items to our buyers. We also generate shipping services revenue from the shipping fees for consigned products returned by our buyers to us within policy. We recognize shipping services revenue over time as the shipping activity occurs. Shipping services revenue excludes the effect of buyer incentives and sales tax.

Cost of Revenue

Cost of consignment revenue consists of credit card fees, packaging, customer service personnel-related costs, website hosting services, and consignor inventory adjustments related to lost or damaged products. Cost of direct revenue consists of the cost of goods sold, credit card fees, packaging, customer service personnel-related costs, website hosting services, and inventory adjustments for lower of cost or net realizable value provisions and for lost or damaged products. Cost of shipping services revenue consists of the outbound shipping and handling costs to deliver purchased items to our buyers, the shipping costs for consigned products returned by our buyers to us within policy, and an allocation of the credit card fees associated with the shipping fee charged.

Marketing

Marketing expense comprises the cost of acquiring and retaining consignors and buyers, including the cost of television, digital and direct mail advertising. Marketing expense also includes personnel-related costs for employees engaged in these activities. We expect these expenses to continue to decrease as a percentage of revenue over the longer term.

Operations and Technology

Operations and technology expense principally includes personnel-related costs for employees involved with the authentication, merchandising and fulfillment of goods sold through our online marketplace and retail stores, as well as our general information technology expense. Operations and technology expense also includes allocated facility and overhead costs, costs related to our retail stores, facility supplies, inbound consignment shipping costs and depreciation of hardware and equipment, as well as research and development expense for technology associated with managing and improving our operations. We capitalize a portion of our proprietary software and technology development costs. As such, operations and technology expense also includes amortization of capitalized technology development costs. We expect operations and technology expense to increase in future periods to support our growth, including continuing to invest in automation and other technology improvements to support and drive efficiency in our operations. These expenses may vary from year to year as a percentage of revenue, depending primarily upon when we choose to make more significant investments. We expect these expenses to continue to decrease as a percentage of revenue over the longer term.

Selling, General and Administrative

Selling, general and administrative expense is principally comprised of personnel-related costs for our sales professionals and employees involved in finance and administration. Selling, general and administrative expense also includes allocated facilities and overhead costs and professional services, including accounting and legal advisors. We expect these expenses to continue to decrease as a percentage of revenue over the longer term.

Restructuring charges

Restructuring expense is primarily comprised of right-of-use asset and fixed asset impairments, severance benefits, and other related charges, including net gain on lease terminations. Impairment losses are measured and recorded for the excess of carrying value over its fair value, estimated based on expected future cash flows using discount rate and other quantitative and qualitative factors. The assumptions used such as projected future cash flows, discount rates, and determination of appropriate market comparable, are subject to volatility and may differ from actual results.

Provision for Income Taxes

Our provision for income taxes consists primarily of state minimum taxes in the United States. We have a full valuation allowance for our net deferred tax assets primarily consisting of net operating loss carryforwards, accruals and reserves, stock-based compensation, fixed assets, and other book-to-tax timing differences. We expect to maintain this full valuation allowance for the foreseeable future.

Results of Operations

The following tables set forth our results of operations (in thousands) and such data as a percentage of revenue for the periods presented:

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2024	2023	2024	2023
Revenue:				
Consignment revenue	$ 116,908	$ 102,852	$ 345,270	$ 302,072
Direct revenue	15,623	17,356	45,056	63,196
Shipping services revenue	15,224	12,964	46,163	40,663
Total revenue	147,755	133,172	436,489	405,931
Cost of revenue:				
Cost of consignment revenue	13,326	13,577	39,714	43,681
Cost of direct revenue	12,925	15,686	38,970	61,162
Cost of shipping services revenue	10,791	9,837	32,347	30,859
Total cost of revenue	37,042	39,100	111,031	135,702
Gross profit	110,713	94,072	325,458	270,229
Operating expenses:				
Marketing	11,604	11,591	40,646	44,460
Operations and technology	66,199	61,038	194,593	194,645
Selling, general and administrative	47,512	44,788	141,364	138,959
Restructuring charges	—	(856)	196	37,396
Total operating expenses	125,315	116,561	376,799	415,460
Loss from operations	(14,602)	(22,489)	(51,341)	(145,231)
Change in fair value of warrant liability	744	—	(9,209)	—
Gain on extinguishment of debt	—	—	4,177	—
Interest income	1,940	2,260	6,272	6,717
Interest expense	(5,948)	(2,673)	(15,468)	(8,018)
Loss before provision for income taxes	(17,866)	(22,902)	(65,569)	(146,532)
Provision for income taxes	72	47	178	247
Net loss	$ (17,938)	$ (22,949)	$ (65,747)	$ (146,779)

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2024	2023	2024	2023
Revenue:				
Consignment revenue	79 %	77 %	79 %	74 %
Direct revenue	11	13	10	16
Shipping services revenue	10	10	11	10
Total revenue	100	100	100	100
Cost of revenue:				
Cost of consignment revenue	9	10	9	11
Cost of direct revenue	9	12	9	15
Cost of shipping services revenue	7	7	7	8
Total cost of revenue	25	29	25	34
Gross profit	75	71	75	66
Operating expenses:				
Marketing	8	9	9	11
Operations and technology	45	46	45	48
Selling, general and administrative	32	34	32	34
Restructuring charges	—	(1)	—	9
Total operating expenses	85	88	86	102
Loss from operations	(10)	(17)	(11)	(36)
Change in fair value of warrant liability	1	—	(2)	—
Gain on extinguishment of debt	—	—	1	—
Interest income	1	2	1	2
Interest expense	(4)	(2)	(4)	(2)
Loss before provision for income taxes	(12)	(17)	(15)	(36)
Provision for income taxes	—	—	—	—
Net loss	(12)%	(17)%	(15)%	(36)%

Comparison of the Three Months Ended September 30, 2024 and 2023

Consignment Revenue

	Three Months Ended September 30,		Change	
	2024	2023	Amount	%
	(In thousands, except percentage)			
Consignment revenue	$ 116,908	$ 102,852	$ 14,056	14 %

Consignment revenue increased by $14.1 million, or 14% in the three months ended September 30, 2024 compared to the three months ended September 30, 2023. The increase in revenue was driven primarily by an increase in consignment GMV and improvement in our take rate during the three months ended September 30, 2024 compared to the three months ended September 30, 2023.

Overall GMV increased by 6% during the three months ended September 30, 2024. Our take rate increased to 38.6% from 38.1% during the three months ended September 30, 2024 compared to the three months ended September 30, 2023 due to the larger sales mix of higher take rate categories such as women's apparel. Additionally, returns and cancellations as a percentage of GMV improved for the three months ended September 30, 2024 to 22.6% from 25.7% for the three months ended September 30, 2023.

Direct Revenue

	Three Months Ended September 30,		Change	
	2024	2023	Amount	%
	(In thousands, except percentage)			
Direct revenue	$ 15,623	$ 17,356	$ (1,733)	(10)%

Direct revenue decreased by $1.7 million, or 10%, in the three months ended September 30, 2024 compared to the three months ended September 30, 2023. The decrease was primarily driven by our planned actions to minimize vendor-purchased company-owned inventory as the margin profile of our direct revenue is lower than consignment revenue. We recognize direct revenue on a gross basis upon shipment of the purchased good to the buyer. Direct revenue as a percentage of total revenue may vary from period to period primarily based on the growth of consignment revenue.

Shipping Services Revenue

	Three Months Ended September 30,		Change	
	2024	2023	Amount	%
	(In thousands, except percentage)			
Shipping services revenue	$ 15,224	$ 12,964	$ 2,260	17 %

Shipping services revenue increased by $2.3 million, or 17%, in the three months ended September 30, 2024 compared to the three months ended September 30, 2023 primarily due to the increase in the number of orders in the three months ended September 30, 2024, and due to an increase in the standard shipping fee per order.

Cost of Consignment Revenue

	Three Months Ended September 30,		Change	
	2024	2023	Amount	%
	(In thousands, except percentage)			
Cost of consignment revenue	$ 13,326	$ 13,577	$ (251)	(2)%

Cost of consignment revenue decreased by $0.3 million, or 2%, in the three months ended September 30, 2024 compared to the three months ended September 30, 2023, driven by efficiencies in our cost leverage.

Consignment revenue gross margin increased by 180 basis points in the three months ended September 30, 2024 compared to the three months ended September 30, 2023 primarily driven by the improvement in take rate and the resulting increase in consignment revenue.

Cost of Direct Revenue

	Three Months Ended September 30,		Change	
	2024	2023	Amount	%
	(In thousands, except percentage)			
Cost of direct revenue	$ 12,925	$ 15,686	$ (2,761)	(18)%

Cost of direct revenue decreased by $2.8 million, or 18%, in the three months ended September 30, 2024 compared to the three months ended September 30, 2023. The decrease was primarily attributable to the decrease in direct revenue compared to the prior year.

Direct revenue gross margin increased by 765 basis points for the three months ended September 30, 2024, primarily driven by strategic liquidation of company owned inventory sold at discounted prices, which resulted in sell through of inventory that was previously reserved. The margin profile of our direct revenue is lower than consignment revenue.

Cost of Shipping Services Revenue

	Three Months Ended September 30,		Change	
	2024	2023	Amount	%
	(In thousands, except percentage)			
Cost of shipping services revenue	$ 10,791	$ 9,837	$ 954	10 %

Cost of shipping services revenue increased by $1.0 million, or 10%, in the three months ended September 30, 2024 compared to the three months ended September 30, 2023, primarily due to a 4% increase in the number of orders and increased cost per shipment.

Shipping services revenue gross margin increased by 500 basis points for the three months ended September 30, 2024, primarily due to the increase in the standard shipping fee per order.

Total Gross Margin

Our total gross margin increased by 430 basis points in the three months ended September 30, 2024 compared to the three months ended September 30, 2023, due to the increase in consignment revenue and decrease in direct revenue as a percentage of total revenue and the improvement in take rate. Gross margin may vary from period to period.

Marketing

	Three Months Ended September 30,		Change	
	2024	2023	Amount	%
	(In thousands, except percentage)			
Marketing	$ 11,604	$ 11,591	$ 13	0 %

Marketing expense remained relatively flat in the three months ended September 30, 2024 compared to the three months ended September 30, 2023.

As a percent of revenue, marketing expense decreased to 8% from 9% in the three months ended September 30, 2024 and 2023. These expenses may vary from period to period as a percentage of revenue, depending primarily upon our marketing investments. We expect these expenses to decrease as a percentage of revenue over the longer term.

Operations and Technology

	Three Months Ended September 30,		Change	
	2024	2023	Amount	%
	(In thousands, except percentage)			
Operations and technology	$ 66,199	$ 61,038	$ 5,161	8 %

Operations and technology expense increased by $5.2 million, or 8%, in the three months ended September 30, 2024 compared to the three months ended September 30, 2023. The increase was primarily due to increased employee compensation related expenses due to an increase in headcount compared to the prior period.

As a percent of revenue, operations and technology expense decreased to 45% from 46% in the three months ended September 30, 2024 and 2023, respectively. These expenses may vary from period to period as a percentage of revenue, depending primarily upon when we choose to make more significant investments. We expect these expenses to decrease as a percentage of revenue over the longer term.

Selling, General and Administrative

	Three Months Ended September 30,		Change	
	2024	2023	Amount	%
	(In thousands, except percentage)			
Selling, general and administrative	$ 47,512	$ 44,788	$ 2,724	6 %

Selling, general and administrative expense increased by $2.7 million, or 6%, in the three months ended September 30, 2024 compared to the three months ended September 30, 2023. The increase was primarily due to increased employee compensation related expenses due to an increase in headcount compared to the prior period.

As a percent of revenue, selling, general and administrative expense decreased to 32% from 34% in the three months ended September 30, 2024 compared to the three months ended September 30, 2023. These expenses may vary from period to period as a percentage of revenue. We expect these expenses to decrease as a percentage of revenue over the longer term.

Restructuring charges

	Three Months Ended September 30,		Change	
	2024	2023	Amount	%
	(In thousands, except percentage)			
Restructuring charges	$ —	$ (856)	$ 856	100 %

We did not incur any restructuring charges during the three months ended September 30, 2024, compared to $(0.9) million in the three months ended September 30, 2023. The decrease was primarily due to a gain recognized on various lease terminations during the three months ended September 30, 2023.

Change in Fair Value of Warrant Liability

	Three Months Ended September 30,		Change	
	2024	2023	Amount	%
	(In thousands, except percentage)			
Change in fair value of warrant liability	$ 744	$ —	$ 744	100 %

The fair value of warrant liability decreased by $0.7 million, or 100% for the three months ended September 30, 2024 compared to the three months ended September 30, 2023. The change was due to the unrealized gain on the change in fair value of the warrant liability from June 30, 2024 to September 30, 2024 (See Note 6 — Non-convertible Notes, Net). The Company issued warrants to acquire an aggregate of up to 7,894,737 shares (subject to adjustment in accordance with the terms of the warrants) of the Company's common stock as part of the Note Exchange in February 2024. The cumulative fair value adjustment since the issuance date is $9.2 million.

Interest Income

	Three Months Ended September 30,		Change	
	2024	2023	Amount	%
	(In thousands, except percentage)			
Interest income	$ 1,940	$ 2,260	$ (320)	(14)%

Interest income decreased by $0.3 million, or 14%, for the three months ended September 30, 2024 as compared to the three months ended September 30, 2023 due to lower average cash balances.

Interest Expense

	Three Months Ended September 30,		Change	
	2024	2023	Amount	%
	(In thousands, except percentage)			
Interest expense	$ (5,948)	$ (2,673)	$ (3,275)	123 %

Interest expense increased by $3.3 million, or over 100% for the three months ended September 30, 2024 compared to the three months ended September 30, 2023 due to the contractual interest expense related to the 2029 Notes issued in February 2024.

Comparison of the Nine Months Ended September 30, 2024 and 2023

Consignment Revenue

	Nine Months Ended September 30,		Change	
	2024	2023	Amount	%
	(In thousands, except percentage)			
Consignment revenue, net	$ 345,270	$ 302,072	$ 43,198	14 %

Consignment revenue increased by $43.2 million, or 14%, in the nine months ended September 30, 2024 compared to the nine months ended September 30, 2023. The increase in revenue was driven primarily by an increase in consignment GMV, a 3% increase in our AOV and 110 basis point improvement in our take rate during the nine months ended September 30, 2024 compared to the nine months ended September 30, 2023. Overall GMV increased by 4% during the nine months ended September 30, 2024. The increase in GMV is driven by an increase in consignment GMV, slightly offset by a decrease in direct GMV.

Additionally, returns and cancellations as a percentage of GMV improved for the nine months ended September 30, 2024 to 24.6% from 26.7% for the nine months ended September 30, 2023. Our take rate increased to 38.5% from 37.4% during the nine months ended September 30, 2024 compared to the same period last year due to the update of our commission structure which went into effect on November 1, 2022.

Direct Revenue

	Nine Months Ended September 30,		Change	
	2024	2023	Amount	%
	(In thousands, except percentage)			
Direct revenue	$ 45,056	$ 63,196	$ (18,140)	(29)%

Direct revenue decreased by $18.1 million, or 29%, in the nine months ended September 30, 2024 compared to the nine months ended September 30, 2023. The decrease was primarily driven by our planned actions to minimize vendor-purchased company-owned inventory as the margin profile of our direct revenue is lower than consignment revenue. We recognize direct revenue on a gross basis upon shipment of the purchased good to the buyer. Direct revenue as a percentage of total revenue may vary from period to period primarily based on the growth of consignment revenue.

Shipping Services Revenue

	Nine Months Ended September 30,		Change	
	2024	2023	Amount	%
	(In thousands, except percentage)			
Shipping services revenue	$ 46,163	$ 40,663	$ 5,500	14 %

Shipping services revenue increased by $5.5 million, or 14%, in the nine months ended September 30, 2024 compared to the nine months ended September 30, 2023 primarily due to an increase in the standard shipping fee per order.

Cost of Consignment Revenue

	Nine Months Ended September 30,		Change	
	2024	2023	Amount	%
	(In thousands, except percentage)			
Cost of consignment revenue, net	$ 39,714	$ 43,681	$ (3,967)	(9)%

Cost of consignment revenue decreased by $4.0 million, or 9%, in the nine months ended September 30, 2024 compared to the nine months ended September 30, 2023, driven by a decrease in overhead costs, including packaging, employee compensation related expenses, and website hosting service fees.

Consignment revenue gross margin increased by 296 basis points in the nine months ended September 30, 2024 compared to the nine months ended September 30, 2023, driven by the improvement in take rate and the reduction in overhead costs.

Cost of Direct Revenue

	Nine Months Ended September 30,		Change	
	2024	2023	Amount	%
	(In thousands, except percentage)			
Cost of direct revenue	$ 38,970	$ 61,162	$ (22,192)	(36)%

Cost of direct revenue decreased by $22.2 million, or 36%, in the nine months ended September 30, 2024 compared to the nine months ended September 30, 2023. The decrease was primarily attributable to the decrease in direct revenue compared to the prior year.

Direct revenue gross margin increased by 1,029 basis points for the nine months ended September 30, 2024, primarily driven by strategic liquidation of company owned inventory sold at discounted prices, which resulted in sell through of inventory that was previously reserved. The margin profile of our direct revenue is lower than the margin profile of our consignment revenue.

Cost of Shipping Services Revenue

	Nine Months Ended September 30,		Change	
	2024	2023	Amount	%
	(In thousands, except percentage)			
Cost of shipping services revenue	$ 32,347	$ 30,859	$ 1,488	5 %

Cost of shipping services revenue increased by $1.5 million, or 5%, in the nine months ended September 30, 2024 compared to the nine months ended September 30, 2023, primarily due to an increase in cost per shipment.

The shipping services revenue gross margin increased by 582 basis points for the nine months ended September 30, 2024, primarily due to the increase in the standard shipping fee per order.

Total Gross Margin

Our total gross margin increased by 799 basis point for the nine months ended September 30, 2024 compared to the nine months ended September 30, 2023, primarily driven by the increase in consignment revenue and decrease in direct revenue as a percentage of total revenue and the improvement in our take rate. Gross margin may vary from period to period.

Marketing

	Nine Months Ended September 30,		Change	
	2024	2023	Amount	%
	(In thousands, except percentage)			
Marketing	$ 40,646	$ 44,460	$ (3,814)	(9)%

Marketing expense decreased by $3.8 million, or 9%, in the nine months ended September 30, 2024 compared to the nine months ended September 30, 2023. The decrease was primarily due to decreased advertising costs.

As a percent of revenue, marketing expense decreased to 9% from 11% in the nine months ended September 30, 2024 and 2023, respectively. These expenses may vary from period to period as a percentage of revenue, depending primarily upon our marketing investments. We expect these expenses to decrease as a percentage of revenue over the longer term.

Operations and Technology

	Nine Months Ended September 30,		Change	
	2024	2023	Amount	%
	(In thousands, except percentage)			
Operations and technology	$ 194,593	$ 194,645	$ (52)	0 %

Operations and technology expense remained relatively flat in the nine months ended September 30, 2024 compared to the nine months ended September 30, 2023.

As a percent of revenue, operations and technology expense decreased to 45% from 48% in the nine months ended September 30, 2024 and 2023, respectively. These expenses may vary from period to period as a percentage of revenue, depending primarily upon when we choose to make more significant investments. We expect these expenses to decrease as a percentage of revenue over the longer term.

Selling, General and Administrative

	Nine Months Ended September 30,		Change	
	2024	2023	Amount	%
	(In thousands, except percentage)			
Selling, general and administrative	$ 141,364	$ 138,959	$ 2,405	2 %

Selling, general and administrative expense increased by $2.4 million, or 2%, in the nine months ended September 30, 2024 compared to the nine months ended September 30, 2023. The increase was primarily due to increased employee compensation related expenses due to an increase in headcount compared to the prior period.

As a percent of revenue, selling, general and administrative expense decreased to 32% from 34% in the nine months ended September 30, 2024 and 2023, respectively. These expenses may vary from period to period as a percentage of revenue. We expect these expenses to decrease as a percentage of revenue over the longer term.

Restructuring charges

	Nine Months Ended September 30,		Change	
	2024	2023	Amount	%
	(In thousands, except percentage)			
Restructuring charges	$ 196	$ 37,396	$ (37,200)	(99)%

Restructuring charges decreased by $37.2 million, or 99%, during the nine months ended September 30, 2024 compared to the nine months ended September 30, 2023. We incurred charges to reduce our real estate presence and operating expenses through the closure of certain retail and office locations and workforce reduction during the nine months ended September 30, 2023, which were substantially completed during 2023.

Change in Fair Value of Warrant Liability

	Nine Months Ended September 30,		Change	
	2024	2023	Amount	%
	(In thousands, except percentage)			
Change in fair value of warrant liability	$ (9,209)	$ —	$ (9,209)	100 %

The fair value of warrant liability increased by $9.2 million, or 100% for the nine months ended September 30, 2024 compared to the nine months ended September 30, 2023. The Company issued warrants to acquire an aggregate of up to 7,894,737 shares (subject to adjustment in accordance with the terms of the warrants) of the Company's common stock as part of the Note Exchange in February 2024. The change was due to the unrealized loss on the change in fair value of the warrant liability from the issuance date to September 30, 2024 (See Note 6 — Non-convertible Notes, Net).

Gain on Extinguishment of Debt

	Nine Months Ended September 30,		Change	
	2024	2023	Amount	%
	(In thousands, except percentage)			
Gain on extinguishment of debt	$ 4,177	$ —	$ 4,177	100 %

Gain on extinguishment of debt increased by $4.2 million, or 100% for the nine months ended September 30, 2024 compared to the nine months ended September 30, 2023. The increase was due to the gain recorded from the extinguishment of the Exchanged Notes (as defined below) and the issuance of the 2029 Notes (See Note 6 — Non-convertible Notes, Net).

Interest Income

	Nine Months Ended September 30,		Change	
	2024	2023	Amount	%
	(In thousands, except percentage)			
Interest income	$ 6,272	$ 6,717	$ (445)	(7)%

Interest income decreased by $0.4 million, or 7% in the nine months ended September 30, 2024 compared to the nine months ended September 30, 2023 due to lower average cash balances.

Interest Expense

	Nine Months Ended September 30,		Change	
	2024	2023	Amount	%
	(In thousands, except percentage)			
Interest expense	$ (15,468)	$ (8,018)	$ (7,450)	93 %

Interest expense increased by $7.5 million, or 93% in the nine months ended September 30, 2024 compared to the nine months ended September 30, 2023 due to the contractual interest expense related to the 2029 Notes issued in February 2024.

Liquidity and Capital Resources

As of September 30, 2024, we had cash and cash equivalents of $153.2 million and an accumulated deficit of $1,185.4 million. With the expiration of the Revolving Credit Agreement in the three months ended June 30, 2023, we had restricted cash of $14.9 million as of September 30, 2024, consisting of cash deposited with a financial institution as collateral for our letters of credit, facility leases and credit cards. Since inception, we have generated negative cash flows from operations and have primarily financed our operations through equity and convertible debt financings. In July 2019, we received net proceeds of $315.5 million upon completion of our initial public offering ("IPO"). In June 2020, we received net proceeds of $143.3 million from the issuance of the 2025 Notes and the related capped call transactions. In March 2021, we received net proceeds of $244.5 million from the 2028 Notes and the related capped call transactions. In February 2024, we exchanged $145.8 million of the 2025 Notes and $6.5 million of the 2028 Notes for $135.0 million in aggregate principal amount of the 2029 Notes (the “Note Exchange”). As a result of the Note Exchange, we significantly extended the average maturity date of our outstanding indebtedness (see Note 6 - Non-convertible Notes, Net).

We expect that operating losses and negative cash flows from operations could continue in the foreseeable future. We believe our existing cash and cash equivalents as of September 30, 2024 will be sufficient to meet our working capital and capital expenditures needs for at least the next 12 months.

Our primary capital requirements include contractual obligations related to our operating leases, certain non-cancellable contracts and compensation and benefits payments to support our strategic plans. Our future capital requirements will depend on many factors, including, but not limited to, those set forth under the heading "Risk Factors" in this Quarterly Report, and our ability to grow our revenues and the timing of investments to support growth in our business, such as the build-out of our authentication centers and, to a lesser extent, the opening of new retail stores. We may seek additional equity or debt financing. In the event that additional financing is required from outside sources, we may not be able to raise it on terms acceptable to us or at all. If we are unable to raise additional capital when desired, our business, financial condition and results of operations could be adversely affected.

In April 2021, the Company entered into a loan and security agreement (“Revolving Credit Agreement”) with a lender, to provide a revolving line of credit of up to $50 million. The credit facility was set to expire in April 2023. In April 2023 the Company signed an amendment with the lender to extend the credit facility through June 2023. As of June 30, 2023, $0 had been drawn on the Revolving Credit Agreement, and the credit facility has expired and was not renewed.

Cash Flows

The following table summarizes our cash flows for the periods indicated.

	Nine Months Ended September 30,	
	2024	2023
Net cash (used in) provided by:		
Operating activities	$ (1,148)	$ (71,791)
Investing activities	(16,758)	(35,398)
Financing activities	(4,627)	(36)
Net decrease in cash, cash equivalents and restricted cash	$ (22,533)	$ (107,225)

Net Cash Used in Operating Activities

During the nine months ended September 30, 2024, net cash used in operating activities was $1.1 million, which consisted of a net loss of $65.7 million, adjusted by non-cash charges of $73.4 million and cash outflows due to a net change of $8.8 million in our operating assets and liabilities. The net change in our non-cash charges operating assets and liabilities was primarily the result of cash outflows due to a decrease of $15.3 million in operating lease liabilities and a $5.0 million decrease in accrued consignor payable, partially offset by an increase of $10.0 million in other accrued and current liabilities.

During the nine months ended September 30, 2023, net cash used in operating activities was $71.8 million, which consisted of a net loss of $146.8 million, adjusted by non-cash charges of $109.0 million and cash outflows due to a net change of $34.0 million in our operating assets and liabilities. The net change in our operating assets and liabilities was primarily the result of cash outflows due to a decrease of $21.4 million in operating lease liabilities, a $15.0 million decrease in accrued consignor payable, a $2.9 million increase in accounts receivable, and a $2.9 million increase in other assets, partially offset by a decrease of $9.5 million in inventory.

Net Cash Used in Investing Activities

During the nine months ended September 30, 2024, net cash used in investing activities was $16.8 million, which consisted of $9.2 million for purchases of property and equipment, net, including leasehold improvements and $8.1 million for capitalized proprietary software development costs, partially offset by $0.5 million of insurance proceeds received related to the warehouse fire.

During the nine months ended September 30, 2023, net cash used in investing activities was $35.4 million, which consisted of $25.5 million for purchases of property and equipment, net, including leasehold improvements and $9.9 million for capitalized proprietary software development costs.

Net Cash Used in Financing Activities

During the nine months ended September 30, 2024, net cash used in financing activities was $4.6 million, which primarily consisted of payment of debt issuance costs related to the Note Exchange.

During the nine months ended September 30, 2023, net cash used in financing activities remained relatively flat. Proceeds of $0.4 million from the issuance of employee stock purchase plan ("ESPP") shares were offset by $0.5 million of taxes related to restricted stock units vesting.

Convertible Senior Notes

As of September 30, 2024, we had 3.00% convertible senior notes due 2025 (the "2025 Notes") outstanding in an aggregate principal amount of $26.7 million and 1.00% convertible senior notes due 2028 (the "2028 Notes") outstanding in an aggregate principal amount of $281.0 million (together, the "Convertible Senior Notes"). A portion of the net proceeds from the sale of these Convertible Senior Notes was used to fund the net cost of entering into the capped call transactions described below. We intend to use the remainder of the net proceeds for general corporate purposes.

The 2025 Notes are convertible into cash, shares of our common stock or a combination of cash and shares of our common stock, at the Company's election, at an initial conversion rate of 56.2635 shares of our common stock per $1,000 principal amount of the 2025 Notes, which is equivalent to an initial conversion price of approximately $17.77 per share of our common stock. The initial conversion price of the 2025 Notes represents a premium of approximately 27.5% over the $13.94 closing price of our common stock on June 10, 2020. The 2028 Notes are convertible into cash, shares of our common stock or a combination of cash and shares of our common stock, at the Company's election, at an initial conversion rate of 31.4465 shares of our common stock per $1,000 principal amount of the 2028 Notes, which is equivalent to an initial conversion price of approximately $31.80 per share of our common stock. The initial conversion price of the notes represents a premium of approximately 32.5% over the $24.00 closing price of our common stock on March 3, 2021.

In connection with the Convertible Senior Notes, we entered into privately negotiated capped call transactions, with certain of the initial purchasers or their affiliates. The capped call transactions cover, subject to anti-dilution adjustments, the number of shares of common stock underlying the Convertible Senior Notes sold in the offering. The capped call transactions are generally expected to reduce potential dilution to our common stock upon any conversion of the notes and/or offset any cash payments we are required to make in excess of the principal amount of Convertible Senior Notes, as the case may be, with such reduction and/or offset subject to a cap. The cap price of the capped call transactions related to the 2025 Notes was initially $27.88 per share, which represents a premium of 100.0% over the closing price of our common stock of $13.94 per share on June 10, 2020, and is subject to certain adjustments under the terms of the capped call transactions. The cap price of the capped call transactions related to the 2028 Notes was initially $48.00 per share, which represents a premium of 100.0% over the closing price of our common stock of $24.00 per share on March 3, 2021, and is subject to certain adjustments under the terms of the capped call transactions.

For additional details related to our Convertible Senior Notes, please see “Note 7 – Convertible Senior Notes, Net” to the condensed financial statements included in this report.

2029 Notes and Warrants

On February 29, 2024, the Company entered into exchange agreements with certain holders (the “Exchange Holders”) of its Convertible Senior Notes to exchange (i) $145.8 million in aggregate principal amount of the 2025 Notes and (ii) $6.5 million in aggregate principal amount of the 2028 Notes (together, the “Exchanged Notes”) for $135.0 million in aggregate principal amount of the Company’s 4.25%/8.75% PIK/Cash Senior Secured Notes due 2029 (the “2029 Notes”), pursuant to an indenture. The 2029 Notes bear interest at a rate of 13.00% per annum, consisting of cash interest at a rate of 8.75% per annum payable semi-annually in arrears and payment in-kind interest at a rate of 4.25% per annum payable semi-annually. The 2029 Notes will mature on the earlier of (a) March 1, 2029 and (b) any date, if any, on or after December 1, 2027 on which (a) the aggregate principal amount of the 2028 Notes then outstanding is greater than $20 million and (b) the difference between (i) the amount of unrestricted cash and cash equivalents held by the Company and its subsidiaries (if any) as of such date of determination and (ii) the aggregate principal amount of 2028 Notes outstanding as of such date of determination is less than $75 million. In connection with the Note Exchange, the Company issued warrants to acquire an aggregate of up to 7,894,737 shares (subject to adjustment in accordance with the terms of the warrants) of the Company’s common stock to the holders of the Exchanged Notes at an exercise price of $1.71, subject to certain cashless exercise provisions and adjustment in accordance with the terms of the warrants (the “Warrants”) (see “Note 4 – Fair Value Measurement” to the condensed financial statements included in this report for further details on the terms of the Warrants).

For additional details related to our 2029 Notes, please see “Note 6 – Non-convertible Notes, Net” to the condensed financial statements included in this report.

Contractual Obligations and Commitments

As of September 30, 2024, there were no material changes to the contractual obligations and commitments previously disclosed in our Annual Report on 10-K except for the following related to the Note Exchange described above and in "Note 4 — Fair Value Measurement" and "Note 6 — Non-convertible Notes, Net" to the condensed financial statements included in this report:

On February 29, 2024, we issued the 2029 Notes and Warrants; and

- Our total commitments and obligations in the aggregate principal amount plus the associated future interest payments for the 2025 Notes and 2028 Notes decreased by $152.3 million and $6.7 million, respectively; and
- As of September 30, 2024, our cash requirements related to our 2029 Notes were $225.8 million, of which $12.2 million is expected to be paid within the next 12 months.

Critical Accounting Estimates

Our management’s discussion and analysis of our financial condition and results of operations is based on our financial statements, which have been prepared in accordance with United States generally accepted accounting principles. The preparation of these financial statements requires our management to make judgments and estimates that affect the reported amounts of assets and liabilities and the disclosure of contingent assets and liabilities at the date of the financial statements, as well as the reported revenue generated, and expenses incurred during the reporting periods. Our estimates are based on our historical experience and on various other factors that we believe are reasonable under the circumstances, the results of which form the basis for making judgments about the carrying value of assets and liabilities that are not readily apparent from other sources. Actual results may differ from these judgments and estimates under different assumptions or conditions and any such differences may be material.

While our significant accounting policies are more fully described in Note 2—Summary of Significant Accounting Policies, we believe that the accounting estimates discussed below relate to the more significant areas involving management's judgments and estimates.

Note Exchange

During the nine months ended September 30, 2024, the Company accounted for the Note Exchange as a debt extinguishment and recorded a gain of $4.2 million as the difference between the carrying amount of the Exchanged Notes and the fair value of the 2029 Notes. The fair value of the 2029 Notes is considered a critical estimate because the judgment in the valuation methods utilized and assessing an interest rate that would be available to the company of a similar debt instrument.

Warrants

The Warrants are accounted for as liabilities under ASC 480 since the warrants may be required to be settled in cash in case of a fundamental change, which could occur outside of the Company's control. The fair value of the warrant liability is estimated using the Black-Scholes-Merton option-pricing model and changes in fair value are recognized on the Company's statement of operations.

Recent Accounting Pronouncements

For more information on recently issued accounting pronouncements, see Note 2 to our unaudited condensed financial statements "Summary of Significant Accounting Policies" in this Quarterly Report on Form 10-Q.

Item 3. Quantitative and Qualitative Disclosures About Market Risk.

We are a smaller reporting company as defined by Rule 12b-2 of the Exchange Act and are not required to provide the information otherwise requested under this item.

Item 4. Controls and Procedures.

Evaluation of Disclosure Controls and Procedures

Our management, with the participation of our principal executive officer and principal financial officer, has evaluated the effectiveness of our disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934, as amended ("Exchange Act"), as of the end of the period covered by this Quarterly Report on Form 10-Q. Based on such evaluation, our principal executive officer and principal financial officer have concluded that, as of such date, our disclosure controls and procedures were effective at a reasonable assurance level.

Changes in Internal Control

There were no changes in our internal control over financial reporting identified in management's evaluation pursuant to Rules 13a-15(d) or 15d-15(d) of the Exchange Act during the period covered by this Quarterly Report on Form 10-Q that materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

Inherent Limitations on Effectiveness of Controls and Procedures

Our management, including our principal executive officer and principal financial officer, do not expect that our disclosure controls and procedures or our internal control over financial reporting will prevent all errors and all fraud. A control system, no matter how well designed and operated, can provide only reasonable, not absolute, assurance that the objectives of the control system are met. Further, the design of a control system must reflect the fact that there are resource constraints, and the benefits of controls must be considered relative to their costs. Because of the inherent limitations in all control systems, no evaluation of controls can provide absolute assurance that all control issues and instances of fraud, if any, have been detected. These inherent limitations include the realities that judgments in decision-making can be faulty, and that breakdowns can occur because of a simple error or mistake. Additionally, controls can be circumvented by the individual acts of some persons, by collusion of two or more people or by management override of the controls. The design of any system of controls is also based in part upon certain assumptions about the likelihood of future events, and there can be no assurance that any design will succeed in achieving its stated goals under all potential future conditions; over time, controls may become inadequate because of changes in conditions, or the degree of compliance with policies or procedures may deteriorate. Due to inherent limitations in a cost-effective control system, misstatements due to error or fraud may occur and not be detected.

PART II—OTHER INFORMATION

Item 1. Legal Proceedings.

We are from time to time subject to, and are presently involved in, litigation and other legal proceedings and from time to time, we receive inquiries from government agencies. See “Note 11—Commitments and Contingencies”.

On November 14, 2018, Chanel, Inc. sued the Company in the U.S. District Court for the Southern District of New York. The Complaint alleged federal and state law claims of trademark infringement, unfair competition, and false advertising. On February 1, 2019, Chanel, Inc. filed its First Amended Complaint that included substantially similar claims against the Company. On March 4, 2019, the Company filed a Motion to Dismiss the First Amended Complaint, which was granted in part and dismissed in part on March 30, 2020. The surviving claims against the Company include trademark infringement under 15 U.S.C. § 1114, false advertising under 15 U.S.C. § 1125, and unfair competition under New York common law. On May 29, 2020, the Company filed its Answer to the Amended Complaint. On November 3, 2020, the Company sought leave to amend its Answer to assert counterclaims against Chanel, Inc. for violations of the Sherman Act, 15 U.S.C. §§ 1 & 2, the Donnelly Act, N.Y. Gen. Bus. Law. § 340, and New York common law. The motion for leave to amend was granted on February 24, 2021. On February 25, 2021, the Company filed its First Amended Answer, Affirmative Defenses and Counterclaims against Chanel. The Company’s Counterclaims allege violations of the Sherman Act, 15 U.S.C. §§ 1 & 2, the Donnelly Act, N.Y. Gen. Bus. Law. § 340, and New York common law. On March 18, 2021, Chanel moved to dismiss the Company’s Counterclaims and moved to strike the Company’s unclean hands affirmative defense. Decisions on Chanel’s motion to dismiss and motion strike are pending. The parties agreed to a stay in April 2021 to engage in settlement discussions. After several mediation sessions, the parties were unable to reach a resolution, and the stay was lifted in November 2021. Chanel then sought a partial stay of discovery on the Company's counterclaims and unclean hands defense while Chanel's motion to dismiss and strike those claims are pending, and on March 10, 2022, the Court granted Chanel's request. Since then, the parties have continued to engage in fact discovery regarding Chanel's counterfeiting and false advertising claims against the Company. Fact discovery was scheduled to be completed by August 15, 2023, however, on July 19, 2023, the Court ordered a stay of the case at the parties’ request to enable the parties to attempt mediation again. The mediation scheduled to begin on October 24, 2023 was postponed, and the parties are currently engaged in settlement discussions with a mediator. The final outcome of this litigation, including our liability, if any, with respect to Chanel’s claims, is uncertain. An unfavorable outcome in this or similar litigation could adversely affect the Company’s business and could lead to other similar lawsuits. The Company is not able to predict or reasonably estimate the ultimate outcome or possible losses relating to this claim.

Beginning on September 10, 2019, purported shareholder class action complaints were filed against the Company, its officers and directors and the underwriters of its IPO in the San Mateo Superior Court, Marin County Superior Court, and the United States District Court for the Northern District of California. On July 27, 2021, the Company reached an agreement in principle to settle the shareholder class action. On November 5, 2021, plaintiff filed the executed stipulation of settlement and motion for preliminary approval of the settlement with the federal court. On March 24, 2022, the court entered an order preliminarily approving the settlement. On July 28, 2022, the court entered an order finally approving the settlement and dismissing the case. The financial terms of the stipulation of settlement provide that the Company will pay $11.0 million within thirty (30) days of the later of preliminary approval of the settlement or plaintiff’s counsel providing payment instructions. The Company paid the settlement amount on March 29, 2022 with available resources and recorded approximately $11.0 million for the year ended December 31, 2021 under our Operating expenses as a Legal settlement. One of the plaintiffs in the Marin County case opted out of the federal settlement and is pursuing the claim in Marin County Superior Court. The stay of the state court case has been lifted, and the opt out plaintiff filed an amended complaint on October 31, 2022 alleging putative class claims under the Securities Act of 1933 (the “Securities Act”) on behalf of the two shareholders who opted out of the settlement and those who purchased stock from November 21, 2019 through March 9, 2020, based on purported new revelations. The claims are for alleged violations of Sections 11 and 15 of the Securities Act. On February 23, 2024, plaintiff filed a motion for class certification, which motion remains pending. Merits discovery is stayed in the case until the motion for class certification is decided. While the Company intends to defend vigorously against this litigation, there can be no assurance that the Company will be successful in its defense. For this reason, the Company cannot currently estimate the loss or range of possible losses it may experience in connection with this litigation.

We are currently involved in, and may in the future be involved in, legal proceedings in the ordinary course of business. While it is not possible to determine the outcome of any legal proceedings brought against us, we believe that, except for the matters described above, the resolution of all such matters will not have a material adverse effect on our financial position or liquidity, but could be material to our results of operations in any one accounting period. Regardless of final outcomes, however, any such legal proceedings may nonetheless impose a significant burden on management and employees and may come with costly defense costs or unfavorable preliminary and interim rulings. There are inherent uncertainties in these legal matters, some of which are beyond management’s control, making the ultimate outcomes difficult to predict.

Moreover, management's views and estimates related to these matters may change in the future, as new events and circumstances arise and as the matters continue to develop.

Item 1A. Risk Factors.

Risk Factors Summary

The following is a summary of the principal risks and uncertainties described in more detail in this Quarterly Report on Form 10-Q and in our 2023 Annual Report on Form 10-K.

Risks Relating to Our Business and Industry

- We have a history of losses and we may not be able to achieve or maintain profitability in the future.
- The savings plan we implemented in February 2023 may not result in anticipated savings, could result in total costs and expenses that are greater than expected and could disrupt our business.
- We may not be able to return to historic levels of revenue growth rate or effectively manage growth or new opportunities.
- We may not accurately forecast revenue and appropriately plan our expenses.
- We have experienced seasonal and quarterly variations in our revenue and operating results.
- Greater than expected product returns may exceed our reserve for returns.
- We may require additional capital to support our business growth. If such capital is not available to us, our business, operating results and financial condition may be harmed.
- Public health emergencies or outbreaks of epidemics, pandemics, or contagious diseases such as the COVID-19 pandemic have adversely affected, and could in the future, adversely affect our business and the business of our consignors and buyers.
- The failure of any bank in which we deposit our funds could reduce the amount of cash we have available to pay distributions and make additional investments.

Risks Relating to Our Strategy

- We may be unable to execute on our retail strategy.
- Expansion of our operations internationally will require significant management attention and resources.
- Our growth strategies may not be successfully implemented, help us achieve profitability or generate sustainable revenue and profit.

Risks Relating to Supply

- We may not be able to obtain sufficient new and recurring supply of pre-owned luxury goods.
- We may be unable to attract and retain talented sales professionals.
- Our growth and supply of product offerings are enhanced by our ability to maintain our brand partnerships.

Risks Relating to Demand

- Our continued growth depends on attracting new and retaining repeat buyers.
- National retailers and brands set their own retail prices and promotional discounts on new luxury goods, which could adversely affect our value proposition to consignors and buyers.
- We must successfully gauge and respond to changing preferences among our consignors and buyers.
- We may be unable to replicate our business model for newer categories of consigned goods or different product mixes of consigned goods.
- We rely on consumer discretionary spending, which is adversely affected by economic downturns, including economic recession or depression, and other macroeconomic conditions or trends.
- Our industry is highly competitive and we may not be able to compete effectively.

Risks Related to Marketing and Brand Management

- Our success depends on the accuracy and reliability of our authentication process.
- We may not succeed in promoting and sustaining our brand.
- Our marketing and advertising activity may fail to efficiently drive growth in consignors and buyers.
- We rely on third parties to drive traffic to our website.
- Use of social media, emails and text messages may adversely impact our reputation or subject us to fines.
- The public disclosure of our Environmental, Social and Governance ("ESG") metrics may subject us to risks.

Risks Related to Our Merchandising and Fulfillment

- We may not be able to attract, train and retain specialized personnel and skilled employees.
- We may not be able to identify and lease authentication centers in suitable geographic regions.

- We may experience damage or destruction to our authentication centers or retail stores in which we store of the majority of the consigned luxury goods we offer through our online marketplace.
- Shipping is a critical part of our business and any changes in our shipping arrangements, costs, interruptions in shipping or damage to products in transit could adversely affect our operating results.
- We may be unable to successfully leverage technology to automate and drive efficiencies in our operations.

Risks Related to Data Security, Privacy and Fraud

- We rely on third parties to host our website and mobile app and to process payments.
- Failure of our data security could cause us to incur unexpected expenses or compromise our data assets.
- We may incur significant losses from fraud.

Risks Related to Our Employees

- We may be unable to attract and retain key personnel or effectively manage leadership succession.
- Labor-related matters, including labor disputes, may adversely affect our operations.

Risks Related to Our Intellectual Property

- If we cannot successfully protect our intellectual property, our business could suffer.

Risks Relating to Litigation and Regulatory Uncertainty

- We are currently, and may be in the future, party to lawsuits and other claims.
- Our use and other processing of personal information and other data is subject to laws and obligations relating to privacy and data protection.
- We pay or collect sales taxes in all jurisdictions which require such taxes.
- Failure to comply with applicable laws or regulations may subject us to fines, penalties, loss of licensure, registration, facility closures or other governmental enforcement action.
- Our ability to use our net operating loss carryforwards and certain other tax attributes may be limited.
- If our internal control over financial reporting or our disclosure controls and procedures are not effective, we may not be able to accurately report our financial results, prevent fraud or file our periodic reports in a timely manner, which may cause investors to lose confidence in our reported financial information.

Risks Related to Ownership of Our Common Stock

- The market price of our common stock may be volatile or may decline steeply or suddenly regardless of our operating performance and we may not be able to meet investor or analyst expectations.
- Short sellers of our stock may be manipulative and may drive down the market price of our common stock.
- Delaware law and provisions in our certificate of incorporation and bylaws could make a merger, tender offer or proxy contest difficult, thereby depressing the trading price of our common stock.
- Our certificate of incorporation designates the Court of Chancery of the State of Delaware located within the State of Delaware as the exclusive forum for substantially all disputes between us and our stockholders.

Risks Related to Our Outstanding Notes and Warrants

- We have incurred a significant amount of debt and may incur additional indebtedness in the future.
- The indentures governing our Convertible Senior Notes and 2029 Notes contain restrictions and other provisions regarding events of default that may make it more difficult to execute our strategy or to effectively compete, or that could materially affect our financial position.
- Transactions relating to the Convertible Senior Notes or Warrants may dilute the ownership interest of our stockholders.
- The conversion of the Convertible Senior Notes or the cash settlement of the Warrants, if triggered, may adversely affect our financial condition and operating results.
- The accounting method for the Warrants materially affects our reported financial results.
- The accounting method for the Convertible Senior Notes materially affects our reported financial results.

The Company has reviewed and updated its risk factors as previously disclosed in its 2023 Annual Report on Form 10-K. Investing in our common stock involves a high degree of risk. You should consider and read carefully all of the risks and uncertainties described below, together with all of the other information in this Quarterly Report on Form 10-Q, our 2023 Annual Report on Form 10-K and in our other filings with the Securities and Exchange Commission (SEC). The risks described below are not the only ones we face. The occurrence of any of the following risks or additional risks and uncertainties not presently known to us or that we currently believe to be immaterial could materially and adversely affect our business, financial condition or results of operations.

Risks Relating to Our Business and Industry

We have a history of losses and we may not achieve or maintain profitability in the future.

We experienced net losses of $196.4 million, $168.5 million and $65.7 million in 2021, 2022 and the nine months ended September 30, 2024, respectively, and as of September 30, 2024 we had an accumulated deficit of $1,185.4 million. Our key initiatives currently include growing profitable supply, improving efficiencies, and pursuing new revenue streams. If those initiatives or our investments do not prove successful or our market does not develop as we expect, we may not achieve profitability on the timeline we expect or at all, and may continue to experience losses over the long term. Any failure to increase our revenue sufficiently to keep pace with our investments and other expenses could prevent us from achieving or maintaining profitability or positive cash flow on a consistent basis. If we are unable to successfully address these risks and challenges as we encounter them, our business, financial condition and operating results could be adversely affected. We cannot assure you that we will ever achieve or sustain profitability and may continue to incur significant losses going forward.

The savings plan we implemented in February 2023 may not result in anticipated savings, could result in total costs and expenses that are greater than expected and could disrupt our business.

In February 2023, we implemented a reduction in workforce of approximately 7% and a reduction in our real estate presence to reduce our operating expenses. See “Note 10 – Restructuring” for further details.

We may not realize, in full or in part, the anticipated benefits, savings and improvements in our operating structure from these efforts due to unforeseen difficulties, delays or unexpected costs. If we are unable to realize the expected operational efficiencies and cost savings from these efforts, our operating results and financial condition, and cash flows would be adversely affected. In addition to the February 2023 workforce reduction, from time to time we have made workforce reductions, as part of cost cutting initiatives or otherwise. We cannot guarantee that we will not have to undertake additional workforce or real estate reductions in the future.

Furthermore, we may also discover that the workforce reduction will make it difficult for us to pursue new opportunities and initiatives and require us to hire qualified replacement personnel, which may require us to incur additional and unanticipated costs and expenses. We may further discover that, despite the implementation of our workforce reduction, we may require additional capital to continue expanding our business, and we may be unable to obtain such capital on acceptable terms, if at all. In addition, our real estate reduction plan could harm our brand reputation, result in unanticipated charges or disputes, constrain our ability generate new supply, and reduce demand in buyers. If we decide to open retail locations in the future, we may not be able to secure leases on comparable terms in comparable locations. Our failure to successfully accomplish any of the above activities and goals may have a material adverse impact on our business, financial condition, and results of operations.

We may not be able to return to historic levels of revenue growth rate or effectively manage growth or new opportunities.

Our past revenue growth should not be considered indicative of future performance. While we experienced revenue growth in 2019, 2021 and 2022, our revenue for fiscal 2023 decreased compared to 2022. Our online marketplace represents a substantial departure from the traditional resale market for luxury goods. While our business grew rapidly prior to the COVID-19 pandemic, the resale market for luxury goods may not continue to develop in a manner that we expect or that otherwise would be favorable to our business. Changes in our market make it difficult to assess our future performance. You should consider our business and prospects in light of the risks and difficulties we may encounter. As we grow our business, our revenue growth rates may continue to decline in future periods due to a number of factors, including our inability to attract and retain consignors, general economic conditions, including a recession, increased market adoption against which future growth will be measured, increasing competition, slowing demand for items on our online marketplace from existing and new customers, changes to our commission structure, take rate or business model, changes in our total product mix, including as a result of our strategic shift to focus on higher value items or our failure to capitalize on growth opportunities. Our rapid growth has placed significant demands on our management and our operational and financial infrastructure. Continued growth could strain our ability to maintain reliable service levels for our consignors and buyers, develop and improve our operational, financial and management controls, enhance our reporting systems and procedures and recruit, train and retain highly skilled personnel. Failure to effectively manage the growth of our business and operations would negatively affect our reputation and brand, business, financial condition and operating results.

We may not accurately forecast revenue and appropriately plan our expenses.

We make certain assumptions when planning our expenses based on our expected revenue. These assumptions are partly based on historical results. We rely on a constant supply of consigned goods to sustain and grow our revenue, making our revenue in any given period difficult to predict. Because our operating expenses are relatively fixed in the short term, any failure to achieve our revenue expectations would have a direct adverse effect on our business, financial condition, operating results and the price of our stock.

We have experienced seasonal and quarterly variations in our revenue and operating results.

Our business is seasonal and historically we have realized a disproportionate amount of our revenue and earnings for the year in the fourth quarter as a result of the holiday season and seasonal promotions. We expect this to continue in the future. If we experience lower than expected revenue during any fourth quarter, it may have a disproportionately large impact on our operating results and financial condition for that year. In any given year, our seasonal sales patterns may become more pronounced, strain our personnel or reduce our profit margins in a given period, which could substantially harm our business, operating results and financial condition. In anticipation of increased activity during the fourth quarter, we also incur significant additional expenses, including additional marketing spend and staffing in our sales and customer support operations. In addition, we may experience an increase in our shipping costs due to complimentary upgrades, split-shipments and additional long-zone shipments necessary to ensure timely delivery for the holiday season. Such increased costs may harm our profitability, especially if we are experiencing lower than expected revenue during the holidays.

Greater than expected product returns may exceed our reserve for returns.

We generally allow buyers to return certain purchases from our website and retail stores under our return policy. We record a reserve for returns against proceeds we receive from the sale of goods on our online marketplace and retail stores when we calculate revenue. We estimate this reserve based on historical return trends and our current expectations. The introduction of new products in the retail market, changes in consumer confidence or other competitive and general economic conditions, and higher than expected returns in connection with fourth quarter holiday buying may cause actual returns to exceed our reserve for returns. Any significant increase in returns that exceeds our reserves could adversely affect our revenue and operating results.

We may require additional capital to support business growth. If such capital is not available to us, our business operating results and financial condition may be harmed.

We may require additional funds to support our growth and respond to business challenges. To support our future growth, we may need to further develop our online marketplace services, grow our retail presence, expand our categories of pre-owned luxury goods, enhance our operating infrastructure, expand the markets in which we operate and potentially acquire complementary businesses and technologies. Accordingly, we may need to engage in equity or debt financings to secure additional funds, which may result in significant dilution to existing stockholders or the granting of new equity securities which have rights, preferences and privileges superior to those of holders of our common stock. Our 2029 Notes contain, and any other debt financing secured by us could also contain, restrictive covenants relating to our capital-raising activities and other financial and operational matters, which may make it more difficult for us to obtain additional capital and to pursue business opportunities in the future. In addition, we may not be able to obtain additional financing on terms favorable to us, if at all. If we are unable to obtain financing on terms satisfactory to us when we require it, our ability to support our business growth and to respond to business challenges could be significantly limited, and our business and prospects could fail or be adversely affected.

Public health emergencies or outbreaks of epidemics, pandemics, or contagious diseases such as the COVID-19 pandemic have adversely affected, and could in the future, adversely affect our business and the business of our consignors and buyers.

An epidemic, pandemic or similar serious public health issue, and the measures undertaken by governmental authorities to address it, could significantly disrupt or prevent us from operating our business in the ordinary course for an extended period, and thereby, and/or along with any associated economic and/or social instability or distress, have a material adverse impact on our results of operations, cash flows and financial condition.

The extent to which an epidemic, pandemic or similar serious public health issue could impact our business, results of operations, financial condition and liquidity will depend on numerous evolving factors, known and unknown, that we cannot predict, including the duration and scope of the epidemic, pandemic or similar public health issue; government, business and individual actions that have been and continue to be taken in response; the impact of the public health issue on national and global economic activity; disruption of the financial and labor markets, including the possibility of a national or global economic recession or depression; the limitations on operations requiring employees to perform their duties in-person, such as our warehouse operations; the potential for shipping difficulties, including delayed deliveries to our buyers; and weakened consumer demand. Additionally, the increased number of employees who work remotely during a public health emergency or outbreak could introduce additional operational risk, such as an increased vulnerability to cyber-attacks, and harm productivity and collaboration. In addition, the risks and uncertainties described elsewhere in this “Risk Factors” section may be exacerbated by an epidemic, pandemic or similar serious public health issue.

The failure of any bank in which we deposit our funds could reduce the amount of cash we have available to pay distributions and make additional investments.

The Federal Deposit Insurance Corporation only insures amounts up to $250,000 per depositor. It is likely that we will have cash and cash equivalents and restricted cash deposited in certain financial institutions in excess of federally insured levels. If any of the banking institutions in which we deposit funds ultimately fails, we may lose any amounts of our deposits over federally insured levels. The loss of our deposits could reduce the amount of cash we have available to distribute or invest and could result in a decline in the value of our stockholders' investment.

Risks Relating to Our Strategy

We may be unable to execute on our retail growth strategy.

We currently operate a limited number of retail stores. We believe that retail stores are effective at raising brand awareness with consignors and buyers and generating new supply. We also believe that an expansion of our brick-and-mortar presence complements our online marketplace and strengthens the omni-channel consigning and buying experience. We have in the past and may in the future continue to reassess our retail footprint and adjust our retail strategy in particular geographies. The opening and closing of retail stores brings operational challenges. We may have to enter into long-term leases before we know whether our retail strategy or a particular geography will be successful. We face a number of challenges in opening new stores, including locating retail space having a cost and geographic profile that will allow us to operate in highly desirable shopping locations, hire in-store talent and expand our retail operations in a cost-effective manner. We also have faced and may in the future face a number of challenges in closing existing stores, which may include significant exit costs, managing lease obligations and employee-related costs, including in connection with our recently announced real estate reduction plan. Closing existing stores may also limit our ability to attract new members, generate new supply and increase demand. We must provide our consignors and buyers with a consistent luxury experience across our retail locations. In the past, our stores have been the target of theft and have also experienced property damage. Any such future incidents may result in a disruption to our retail operations and significant costs if not covered by our insurance policies. In addition, the offering of unique, single-SKU products creates supply chain, merchandising and pricing challenges, as we must select the right product mix for each individual store while continuing to manage inventory at our authentication centers. If we are not able to manage or execute on our retail strategy, our business, operating results, prospects and reputation may be harmed.

Expansion of our operations internationally will require significant management attention and resources.

While we have members from outside the United States who purchase items from our online marketplace, we have not expanded our physical operations internationally. If we choose to do so, we would need to adapt to various local cultures, languages, standards, laws and regulations and policies. Our business model we employ may not appeal to consignors and buyers outside of the United States. Furthermore, to succeed with clients in international locations, it will be necessary to locate authentication centers in foreign markets and hire local employees in those markets, and we may have to invest in such facilities before demonstrating that we can successfully run operations outside of the United States. If we invest substantial time and resources to establish and expand our operations internationally and are unable to do so successfully and in a timely manner, our operating results would suffer.

Our growth strategies may not be successfully implemented, help us achieve profitability or generate sustainable revenue and profit.

Our growth strategies, including our initiatives to pursue new revenue streams, are evolving. For example, we have recently introduced third party advertising on our online marketplace. However, these efforts might not be successful, have been, in the case of our third-party advertising, and in other cases perceived negatively by potential consignors and buyers using our online marketplace, or we may not be able to pursue them at all. We may limit the user data shared with third-party advertising partners, which could have a negative effect on our ability to maximize our advertising revenue. In addition, we seek to balance new initiatives with our desire to provide an optimal user experience on our online marketplace, and we may not be successful in achieving a balance that continues to retain and attract consignors and buyers. If our growth strategies, including our initiatives to pursue new revenue streams, are not successful, do not generate sustainable revenue or help us achieve profitability, it could have a material adverse impact on our business and operating results.

Risks Relating to Supply

We may not be able to obtain sufficient new and recurring supply of pre-owned luxury goods.

Our success depends on our ability to generate a consistent supply of luxury goods to sell through our stores and online marketplace. To do this we must cost-effectively attract, retain and grow relationships with consignors. To expand our consignor base, we must appeal to and engage individuals new to consignment, or who have consigned through traditional brick-and-mortar shops but are unfamiliar with our business. We find new consignors by converting buyers utilizing our online marketplace, shopping in our retail stores, or utilizing our luxury consignment offices. We also reach new consignors through paid advertising, marketing materials, digital marketing, referral programs, organic word-of-mouth and other methods, such as mentions in the press, Internet search engine results and through our brand partnerships. We cannot be certain that these efforts will yield new consignors or be cost-effective. Moreover, new consignors may not choose to consign with us a second time or as frequently, or consign as many items or the same value of items, as has historically been the case with existing consignors. Therefore, the revenue generated from new consignors may not be as high as the revenue generated historically from our existing consignors or as high as we expect. Most of the luxury goods we offer through our online marketplace are initially sourced from consignors who are individuals. As a result, we may be subject to periodic fluctuations in the number, brands and quality of goods sold through our online marketplace on behalf of our consignors. In addition, a significant number of our new and existing consignors greatly prefer our concierge consultation method for consigning luxury goods, which involves our sales professionals meeting with our consignors in their homes. In November 2022, we updated our take rate structure with the goals of optimizing take rate, limiting consignment of lower value items, and increasing supply of higher value items. If our updated take rate structure is not successful in increasing the consignment of such items, our brand and reputation could be adversely affected, we may generate less revenue than expected, and we may choose to further refine the structure. We have a buy upfront program in an effort to generate additional supply. If we fail to attract new consignors or drive repeat consignments in a cost-effective manner, or fail to convert buyers to consignors, our ability to grow our business and our operating results would be adversely affected.

We may be unable to attract and retain talented sales professionals.

We rely on our sales professionals to drive our supply of luxury goods by identifying, developing and maintaining relationships with our consignors. The process of identifying and hiring sales professionals with the combination of skills and attributes required in these roles can be difficult and can require significant time. In addition, competition for qualified employees and personnel in the retail industry is intense and turnover amongst our sales professionals within a few years is not uncommon. If we are not successful in attracting and retaining effective sales professionals, the quantity and quality of the luxury goods sold through our online marketplace may be negatively impacted, which would have a material adverse effect on our business and operating results.

Our growth and supply of product offerings are enhanced by our ability to maintain our brand partnerships.

We have established brand partnerships with certain brands, and may seek to add additional brand partnerships in the future. We believe that these partnerships are important to increasing our supply and growing our business. We make direct purchases of products from our brand partners, which helps us to drive supply and expand our product offerings. To establish and maintain these partnerships, brands must trust, among other things, our authentication process and that we provide a level of customer service that matches those generally provided by luxury brands, for both consignors and buyers, online and in-store. If we are unable to provide value to our existing partners or to add new partners, the growth of our business may be harmed.

Risks Relating to Demand

Our continued growth depends on attracting new and retaining repeat buyers.

To expand our buyer base, we must appeal to and attract buyers who do not typically purchase luxury goods, who have historically purchased only new luxury goods or who used other means to purchase pre-owned luxury goods, such as traditional brick-and-mortar consignment shops, auction houses and the websites of other secondary marketplaces. We reach new buyers in part through television and digital advertising, other paid marketing, press coverage, referral programs, organic word of mouth, our brand partnerships and other methods of discovery, such as converting consignors to buyers. We expect to continue investing in these and other marketing channels in the future and cannot be certain that these efforts will yield more buyers or be cost-effective. Moreover, new buyers may not purchase through our online marketplace as frequently or spend as much with us as historically has been the case with existing buyers. As a result, the revenue generated from new buyer transactions may not be as high as the revenue generated from transactions with our existing buyers. Failure to attract new buyers and to maintain relationships with existing buyers would adversely affect our operating results and our ability to attract and retain consignors.

National retailers and brands set their own retail prices and promotional discounts on new luxury goods, which could adversely affect our value proposition to consignors and buyers.

National retailers and brands set pricing for new luxury goods that they sell and from time to time offer sales and promotional pricing, particularly during the fourth quarter holiday season, when we have historically made a substantial portion of our annual sales. Promotional pricing by these parties may lower the value of products consigned with us and our inventory and, in turn, reduce the value proposition for both our consignors and buyers. We have in the past experienced a reduction in our GMV and AOV due to fluctuations in the price of new luxury goods sold by retailers and brands, and we could experience similar reductions and fluctuations in the future. However, the timing and magnitude of such discounting can be difficult to predict and can be brought on by unique factors such as a retailer or brand going out of business and liquidating its inventory, which may happen to a greater extent as a result of macroeconomic uncertainty, inflation, geopolitical instability due in part to the conflict between Russia and Ukraine, the Israel-Hamas war and weakened consumer demand. Any of the foregoing risks could adversely affect our business, financial condition and operating results.

We must successfully gauge and respond to changing preferences among our consignors and buyers.

Our success is in large part dependent upon our ability to anticipate and identify trends in the market for pre-owned luxury goods in a timely manner and to obtain consignments of luxury goods that address those trends. We use data science to predict consignor and buyer preferences, and there can be no assurance that our data science will accurately anticipate consignor or buyer needs. Our business model limits our responsiveness to changing preferences, as the majority of our inventory consists of unique, single-SKU items. While we attempt to source goods that complement our existing inventory, we cannot ensure we will do so successfully. To the extent we do not accurately predict and successfully respond to the evolving preferences of our consignors and buyers, our ability to grow our business and our operating results would be adversely affected.

We may be unable to replicate our business model for newer categories of consigned goods or different product mixes of consigned goods.

In November 2022, we updated our take rate structure with the goals of optimizing take rate, limiting consignment of lower value items, and increasing supply of higher value items. If such higher value items are not attractive to our existing consignors or buyers, or if such items do not attract new consignors or buyers, our revenues may fall short of expectations, our brand and reputation could be adversely affected and we may incur expenses that are not offset by revenues. In addition, our business may be adversely affected if we are unable to attract new and repeat consignors that supply the necessary high-quality, appropriately priced and in-demand luxury merchandise in this high value category. Additionally, as we enter into new categories, potential consignors may demand higher commissions than our current categories, which would adversely affect our take rate and operating results. Expansion of our offerings may also strain our management and operational resources, specifically the need to hire and manage additional authentication and market experts. We may also face novel challenges in our authentication process and methods as we expand our product offerings. In addition, we may experience greater competition in specific categories from companies that are more experienced in these categories. If any of these were to occur, it could damage our reputation, limit our growth and have an adverse effect on our operating results.

We rely on consumer discretionary spending, which is adversely affected by economic downturns, including economic recession or depression, and other macroeconomic conditions or trends.

Our business and operating results are subject to global economic conditions and their impact on consumer discretionary spending, particularly in the luxury goods market. Some of the factors that may reduce luxury spending include economic downturns, including economic recession or depression, high levels of unemployment, higher consumer debt levels, higher levels of inflation, reductions in net worth, declines in asset values, including home values, and related market and economic uncertainty, including as a result of geopolitical instability and disruptions in the financial industry. Many of these factors have occurred, and may occur in the future, as a result of the COVID-19 pandemic and recent macroeconomic uncertainty, rising interest rates, inflationary pressures, credit constraints and geopolitical instability due in part to the conflict between Russia and Ukraine and the Israel-Hamas war. Such economic uncertainty and the resulting decrease in the rate of new luxury goods purchases in the primary market may have a corresponding impact on luxury resale, which could manifest in a number of ways, including fewer individuals choosing to consign their goods with us, resulting in a decrease of items available in our online marketplace, fewer individuals choosing to buy pre-owned luxury goods, resulting in lower active buyer growth and order volume, and lower AOV due to a combination of lower average selling price per item and/or fewer items per average order, any of which could have an adverse effect on our business and operating results.

Additionally, adverse economic changes could reduce consumer confidence, and could thereby negatively affect our operating results. In the event of a prolonged economic downturn or acute recession, significant inflation, or decreased supply, consumer spending habits could be adversely affected, and we could experience lower than expected revenue. Any of these developments could harm our business, financial condition and operating results.

Our industry is highly competitive and we may not be able to compete effectively.

We compete with vendors of new and pre-owned luxury goods, including branded luxury goods stores, department stores, traditional brick-and-mortar consignment stores, pawn shops, auction houses, specialty retailers, discount chains, independent retail stores, the online offerings of traditional retail competitors, resale players focused on niche or single categories, as well as technology-enabled marketplaces that may offer the same or similar luxury goods and services that we offer. Many of our competitors have longer operating histories, larger fulfillment infrastructures, greater brand recognition and technical capabilities, faster or lower-cost shipping, larger selections of goods for sale, greater financial, marketing, institutional and other resources and larger buyer bases than we do. As the market evolves, new competitors may emerge, including traditional retail competitors who expand their offerings to include resale. Some of our competitors may have greater resources than we do, which may allow them to derive greater revenue and profits from their existing buyer bases, acquire consignors at lower costs, achieve more favorable total product mixes or respond more quickly than we can to new or emerging technologies, such as artificial intelligence and machine learning, and changes in consumer shopping behavior or preferences. These competitors may also adopt more aggressive pricing policies, commission structures or take rates, which may allow them to build larger consignor or buyer bases or generate revenue from their existing buyer bases more effectively than we do. New competitors may force us to decrease our take rates to remain competitive and negatively impact on our financial performance. If we fail to respond to competition effectively, our business and operating results may be adversely affected.

Risks Relating to Marketing and Brand Management

Our success depends on the accuracy and reliability of our authentication process.

Our success depends on our ability to accurately and cost-effectively determine whether an item offered for consignment is an authentic product or genuine gemstone, piece of jewelry or work of art. From time to time, we receive counterfeit goods for consignment. While we continue to invest and innovate heavily in our authentication processes and methods, and we reject any goods we believe to be counterfeit, we cannot be certain that every counterfeit item will be identified. In addition, when our authentication method does not involve taking physical possession of goods prior to the sale, our ability to identify counterfeits may decrease, and order cancellations may increase. As the sophistication of counterfeiters increases, it may be increasingly difficult to identify counterfeit products. We refund the cost of a product to a buyer if the buyer questions its authenticity and returns the item. The sale of any counterfeit goods may damage our reputation as a trusted online marketplace for authenticated, pre-owned luxury goods which may impact our ability to attract and maintain consignors, buyers and brand partners. Additionally, we have been and may in the future be subject to negative press or public allegations, including on social media, that our authentication processes and methods are inadequate. Any material failure or perceived failure in our authentication processes and methods could cause buyers and consignors to lose confidence in our platform and adversely affect our revenue.

We may not succeed in promoting and sustaining our brand.

We believe that growing The RealReal brand is critical to driving consignor and buyer engagement as well as attracting brand partners. An important goal of our brand promotion strategy is establishing and maintaining trust with our consignors, buyers and brand partners. Growing our brand will depend largely on our ability to continue providing our consignors with service that is consistent with the level of luxury associated with the goods they are consigning and delivering value for the goods they consign, all in a timely and consistent manner. For buyers, growing our brand requires that we foster trust through authentication, timely and reliable fulfillment of orders, and responsive and effective customer service. To establish and maintain relationships with existing and future brand partners, brands must trust our authentication process and that we provide a level of customer service that matches those generally provided by luxury brands, for both consignors and buyers, online and in-store. If we fail to provide consignors or buyers with the service and experience they expect, or experience consignor or buyer complaints or negative publicity about our products, services, delivery times or customer support, whether justified or not, the value of our brand would be harmed and our business may suffer.

Our marketing and advertising activity may fail to efficiently drive growth in consignors and buyers.

Our future growth and profitability depend in large part upon the effectiveness and efficiency of our marketing, promotion, public relations and advertising programs. We closely monitor the effectiveness of our advertising campaigns and changes in the advertising market, and adjust or re-allocate our advertising spend across channels, customer segments and geographic markets in real-time in an effort to optimize the effectiveness of these activities. We may increase marketing or advertising spend in future periods to drive growth. Even if our marketing and advertising expenses result in increased sales, the increase might not offset our related expenditures. We also face the unique challenge of attracting consignors and buyers to our online marketplace who may be unfamiliar with both our brand and our consignment business model. If we struggle to attract new consignors and buyers to our luxury resale model, or are unable to maintain our marketing and advertising channels on cost-effective terms or replace or supplement existing marketing and advertising channels with similarly or more effective channels, our marketing and advertising expenses could increase substantially, our consignor and buyer base could be adversely affected, and our business, operating results, financial condition and brand could suffer.

We rely on third parties to drive traffic to our website.

We rely in part on digital advertising, including search engine marketing, to promote awareness of our online marketplace, grow our business, attract new consignors and buyers and increase engagement with existing consignors and buyers. In particular, we rely on search engines and major mobile app stores as important marketing channels. If search engines change their algorithms, terms of service, display or the featuring of search results, determine we are out of compliance with their terms of service or if competition increases for advertisements, we may be unable to cost-effectively add consignors and buyers to our website and apps, which would harm our business, operating results and prospects.

Use of social media, emails and text messages may adversely impact our reputation or subject us to fines.

We use social media, emails, push notifications and text messages as part of our omni-channel approach to marketing. As laws and regulations evolve to govern the use of these channels, the failure by us, our employees or third parties acting at our direction to comply with applicable laws and regulations in the use of these channels could adversely affect our reputation or subject us to fines or other penalties. In addition, our employees or third parties acting at our direction may knowingly or inadvertently make use of social media in ways that could lead to the loss or infringement of intellectual property, as well as the public disclosure of proprietary, confidential or sensitive personal information of our business, employees, consignors, buyers or others. Information concerning us or our consignors and brands, whether accurate or not, may be posted on social media platforms at any time. The harm may be immediate without affording us an opportunity for redress or correction and could have a material adverse effect on our reputation, business, operating results, financial condition and prospects.

The public disclosure of our ESG metrics may subject us to risks.

We voluntarily report certain metrics and goals for ESG. This transparency is consistent with our commitment to operate our business with positive economic, social, and environmental impact. The perception held by our consignors or buyers, other key stakeholders, or the communities in which we do business may depend, in part, on the metrics and goals we have chosen to aspire to and whether or not we meet our goals on a timely basis, if at all. Also, by electing to set goals and publicly disclose our ESG metrics, we may face increased scrutiny related to our ESG activities. In addition, we may be required to disclose various ESG metrics, progress against goals and other detailed information under applicable laws and regulations. For example, the State of California has adopted new climate change disclosure requirements, which mandate public disclosure of certain greenhouse gas emissions data and climate-related financial risk reports. Our compliance with these and other ESG-related laws, regulations and policies could be costly, and any failure to meet our goals, change in our ESG priorities or strategies, or perception that we fail to act responsibly in the areas in which we report, may negatively affect our reputation and the value of our brand, including by impacting employee engagement and retention, the willingness of our consignors and buyers and our partners and vendors to do business with us, or investors' willingness to purchase or hold shares of our common stock, any of which could adversely affect our business, financial performance, and growth.

Risks Related to Our Merchandising and Fulfillment

We may not be able to attract, train and retain specialized personnel and skilled employees.

To grow our business, we must continue to improve and expand our merchandising and fulfillment operations, information systems and skilled personnel in the jurisdictions in which we operate so that we have the skilled talent necessary to effectively operate our business. The operation of our business is complex and requires the coordination of multiple functions that are highly dependent on numerous employees and personnel. Each luxury item that we offer through our online marketplace is unique and requires multiple touch points, including, among others, inspection, evaluation, authentication, photography, pricing, copywriting, application of a unique single-SKU and fulfillment. The market for employees is increasingly competitive and highly dependent on geographic location. Some of our employees have specific knowledge and skills that would make it more difficult to hire replacement personnel capable of effectively performing the same tasks without substantial training. We also provide specific training to our employees in each of our business functions in order to provide our consignors and buyers with a consistent luxury experience. If we fail to successfully locate, hire, train and retain personnel in the future, our operations would be negatively impacted, which would have an adverse effect on our business, financial condition and operating results.

We may not be able to identify and lease authentication centers in suitable geographic regions.

We lease facilities to store and accommodate the logistics infrastructure required to merchandise and ship the pre-owned luxury goods we sell through our online marketplace. Our ability to successfully grow our business depends on the availability and cost of leasing additional authentication centers that meet our criteria for a geographic location with access to a large, qualified talent pool as well as square footage, cost and other factors. We currently have four authentication centers - one in Arizona and three in New Jersey. Optimal space may become scarce, and where it is available, the lease terms offered by landlords may become increasingly competitive. Companies who have more financial resources and negotiating leverage than us may be more attractive tenants and, as a result, may outbid us for the facilities we seek. We also may be unable to renew our existing leases or renew them on satisfactory terms. Failure to secure adequate authentication centers could have an adverse effect on our business and operating results.

We may experience damage or destruction to our authentication centers or retail stores in which we store the majority of the consigned luxury goods we offer through our online marketplace.

We store the majority of the luxury goods we offer through our online marketplace in our authentication centers in Arizona and New Jersey, with a smaller portion of luxury goods offered for sale in our retail stores. Any large scale damage to or catastrophic loss of goods stored in such authentication centers or retail stores or any other location where goods offered through our online marketplace are stored, due to natural disasters, especially as catastrophic weather events become more frequent due to climate change, or man-made causes such as arson or theft would result in liability to our consignors for the expected commission liability for the lost items, reduction in the value of our inventory and a significant disruption to our business. In addition, while we take measures to avoid damage, conduct inspections of consigned goods and inspect returned products, we cannot control items while they are out of our possession or prevent all damage while items are stored in our authentication centers. For example, we have in the past and may in the future experience contamination, such as mold, bacteria, viruses, insects and other pests, in the goods shipped to us by our consignors, which may cause contamination of other goods stored in our authentication centers or while shipping to buyers. We may incur additional expenses and our reputation could be harmed if buyers or potential buyers believe that the luxury goods we offer on behalf of our consignors are not of high-quality or may be damaged or contain contaminants. Additionally, given the nature of the unique consigned luxury goods we offer on our online marketplace, our ability to restore the supply of consigned luxury goods on our online marketplace would take time and would result in a limitation and delay of available supply for buyers which would negatively impact our revenue and operating results. While we carry insurance for the consigned luxury goods stored in these authentication centers as well as for business interruption and loss of income, our liabilities and expenses resulting from a catastrophic event could exceed our maximum insurance coverage amounts which could have a material adverse impact on our business and operating results. For example, in May 2024, we experienced a fire on the roof of one of our leased Secaucus warehouses. As of September 30, 2024, our discussions with the insurance company remain ongoing and our liabilities and expenses are expected to exceed our maximum insurance coverage amounts.

Shipping is a critical part of our business and any changes in our shipping arrangements, costs, interruptions in shipping or damage to products in transit could adversely affect our operating results.

Our business depends on shipping vendors to meet our shipping needs. If we are not able to maintain acceptable pricing and other terms or if our vendors experience performance problems or other difficulties, including as a result of inflation, a labor strike by employees of our shipping vendors or rising shipping costs, it could negatively impact our operating results and our consignors' and buyers' experience. If we partner with additional vendors or switch vendors in response to such impact, we may experience a disruption in shipping, which may negatively impact our reputation with consignors and buyers. We face particular challenges in shipping internationally, including delays in shipments and customer service issues relating to the imposition of duties, which can be substantial for luxury items. Because of the seasonality of our business, any disruption to delivery services due to adverse weather, especially as climate change increases the frequency of such adverse weather, could result in delays that could adversely affect our reputation or operational results. In addition, most of the items we sell are considered highly valuable and require special handling and delivery. From time to time, such goods are damaged in transit which can increase return rates, increase our costs and harm our brand. Returned goods may also be damaged in transit as part of the return process which can significantly impact the price we are able to charge for such goods on our online marketplace. If our goods are not delivered to buyers in a timely fashion or are damaged or lost during the consignment or the delivery process, our consignors or buyers could become dissatisfied and cease using our services, which would adversely affect our business and operating results.

We may be unable to successfully leverage technology to automate and drive efficiencies in our operations.

We are building automation, artificial intelligence, machine learning and other capabilities to drive efficiencies in our merchandising and fulfillment operations. As we continue to add capacity, capabilities and automation, our operations will become increasingly complex and challenging. While we expect these technologies to improve productivity in many of our merchandising operations, including pricing, copywriting, authentication, photography and photo retouching, any flaws or failures of such technologies could cause interruptions in and delays to our operations which may harm our business. We have created our own purpose-built technology to operate our business, which may lack efficiency or become obsolete as we grow and we also rely on technology from third parties. If these technologies do not perform in accordance with our expectations, third parties change the terms and conditions that govern their relationships with us, or if competition increases for the technology and services provided by third parties, our business may be harmed. In addition, the evolution of these technologies may create unforeseen competitive pressures or cause disruption.

Risks Related to Data Security, Privacy and Fraud

We rely on third parties to host our website and mobile app and to process payments.

Our brand and ability to attract and retain consignors and buyers depends in part on the reliable performance of our network infrastructure and content delivery process. The continuing and uninterrupted performance of our online marketplace is critical to our success. We have experienced, and expect that in the future we will experience, interruptions, delays and outages in service and availability from time to time due to a variety of factors, including infrastructure changes, human or software errors, website hosting disruptions and capacity constraints which could affect the availability of services on our platform and prevent or inhibit the ability of members to access our online marketplace or complete purchases on our website and app. Volume of traffic and activity on our online marketplace spikes on certain days and during certain periods of the year, such as during a Black Friday promotion and generally during the fourth quarter due to the seasonality of our business, and any interruption would be particularly problematic if it were to occur at such a high volume time.

We rely on third-party payment processors to process payments made by buyers or to consignors on our online marketplace. The software and services provided by our third-party payment processors may not meet our expectations, contain errors or vulnerabilities, be compromised or experience outages. Any of these risks could cause us to lose our ability to accept online payments, make payments to consignors or conduct other payment transactions, any of which could make our platform less convenient and attractive and adversely affect our ability to attract and retain buyers and consignors.

Failure of our data security could cause us to incur unexpected expenses or compromise our data assets.

In the ordinary course of our business, we collect, process and store certain personal information (including credit card information) and other data relating to individuals, such as our consignors, buyers and employees. We also maintain other information, such as our trade secrets and confidential business information, that is sensitive and that we seek to protect. We rely substantially on commercially available systems, software, including third-party open source software, tools and monitoring to provide security for our processing, transmission and storage of personal information and other confidential information. We or our vendors, including cloud storage providers, could be the subject to attacks from computer viruses, break-ins phishing attacks, social engineering, ransomware attacks, unauthorized use, attempts to overload services with denial-of-service or other attacks, which may allow hackers or other unauthorized parties, including our employees, to gain access to personal information or other data, including payment card data or confidential business information. Further, the use of open-source software may also present additional security risks because the public availability of such software may make it easier for hackers and other third parties to compromise our platform. Our members use our web and mobile e-commerce applications to consign and shop with us. These applications may become subject to account takeovers, denials of service, content scraping, or other attacks, which may result in our members' accounts being compromised.

We and our vendors have faced these attacks previously and regularly must defend against or respond to such incidents. We expect to incur ongoing costs associated with the detection and prevention of security breaches and other security-related incidents. The techniques used to obtain unauthorized access or to sabotage systems change frequently and generally are not identified until they are launched against a target, and we and our vendors may be unable to anticipate these techniques or to implement adequate preventative measures. Any actual or perceived compromise of our systems or data security measures or those of third parties with whom we do business, or any failure to prevent or mitigate the loss of personal or other confidential information and delays in detecting or providing notice of any such compromise or loss could disrupt our operations, damage our reputation, cause some participants to decrease or stop their use of our online marketplace and subject us to litigation, government action, increased transaction fees, remediation costs, regulatory fines or penalties or other additional costs and liabilities that could adversely affect our business, financial condition and operating results. While we carry insurance related to potential data breaches, the insurance we do carry may not be adequate to cover all possible losses that our business could suffer.

We may incur significant losses from fraud.

We may fail to prevent consignors from consigning stolen or counterfeit goods. Government regulators and law enforcement officials may allege that our services violate, or aid and abet violations of certain laws, including laws restricting or prohibiting the transferability and, by extension, the resale, of stolen goods. Our form of consignor agreement includes a representation that the consignor has the necessary right and title to the goods they may consign, and we include such a rule and requirement in our terms of service prohibiting the listing of stolen or otherwise illegal products. In addition, we have implemented protective measures to detect such products. If these measures prove inadequate, we may be required to spend substantial resources to take additional protective measures which could negatively impact our operations. In addition, negative publicity relating to the actual or perceived listing or sale of stolen or counterfeit goods could damage our reputation and make our consignors and buyers reluctant to use our services.

We have in the past incurred, and may in the future incur, losses from various types of fraudulent transactions, including the use of stolen credit card numbers, claims that a consignment of a good was not authorized and that a buyer did not authorize a purchase. Under current credit card practices, we are liable for fraudulent credit card transactions because we do not obtain a cardholder’s signature. Our failure to adequately prevent fraudulent transactions could damage our reputation, result in litigation or regulatory action or lead to expenses that could substantially impact our operating results.

Risks Relating to Our Employees

We may be unable to attract and retain key personnel or effectively manage leadership succession.

Our success depends in part on our ability to attract and retain key personnel on our executive team. Senior employees have left our company in the past and others may leave in the future. We often cannot anticipate such departures and may not be able to promptly replace key leadership personnel. The loss of one or more of our key personnel or the inability to promptly identify a suitable successor to a key role could have an adverse effect on our business.

Labor-related matters, including labor disputes, may adversely affect our operations.

None of our employees are currently represented by a union. If our employees decide to form or affiliate with a union, we cannot predict the negative effects such future organizational activities will have on our business and operations. If we were to become subject to work stoppages, we could experience disruption in our operations, including delays in merchandising operations and shipping, and increases in our labor costs, which could have a material adverse effect on our business, financial condition or results of operations. In addition, increased inflation rates could adversely affect us by increasing costs, including labor and employee benefit costs.

Risks Relating to Our Intellectual Property

If we cannot successfully protect our intellectual property, our business could suffer.

We rely on a combination of intellectual property rights, contractual protections and other practices to protect our brand, proprietary information, technologies and processes. We primarily rely on copyright and trade secret laws to protect our proprietary technologies and processes, including the algorithms we use throughout our business. Others may independently develop the same or similar technologies and processes, or may improperly acquire and use information about our technologies and processes, which may allow them to provide a service similar to ours, which could harm our competitive position. Our principal trademark assets include the registered trademark “The RealReal” and our logos and taglines. We also hold the rights to the “therealreal.com” Internet domain name and various related domain names, which are subject to Internet regulatory bodies and trademark and other related laws of each applicable jurisdiction. Our trademarks are valuable assets that support our brand and consumers’ perception of our services and merchandise. If we are unable to protect our trademarks or domain names, our brand recognition and reputation would suffer, we would incur significant expense reestablishing brand equity and our operating results would be adversely impacted.

Risks Relating to Litigation and Regulatory Uncertainty

We are currently, and may be in the future, party to lawsuits and other claims.

We rely on the fair use doctrine when we routinely refer to third-party intellectual property, such as trademarks, on our platform. Third parties may dispute the scope of that doctrine and challenge our ability to reference their intellectual property in the course of our business. For instance, from time to time, we are contacted by companies controlling brands of goods consignors sell, demanding that we cease referencing those brands in connection with such sales, whether in advertising or on our website. We have consistently responded by reference to the holding in *Tiffany (NY), Inc. v. eBay* that factual use of a brand to describe and sell a used good is not false advertising. These matters have generally been resolved with no further communications, but some have resulted in litigation against us. For example, in November 2018, Chanel filed a lawsuit against us in the U.S. District Court for the Southern District of New York bringing various trademark and advertising-related claims under the Lanham Act and New York state law analogues. The final outcome of this litigation, including our liability, if any, with respect to Chanel’s claims, is uncertain. An unfavorable outcome in this or similar litigation could adversely affect our business and could lead to other similar lawsuits. See “Part II, Item 1 – Legal Proceedings” for a description of the Chanel litigation.

In addition, the Company, its officers and directors and the underwriters of the Company’s initial public offering (“IPO”) were named as defendants in numerous purported securities class actions in connection with the Company’s IPO (the “Securities Litigation”). See “Part II, Item 1 – Legal Proceedings” for a description of the Securities Litigation.

In addition, we have in the past and could face in the future a variety of employee claims against us, including general discrimination, privacy, wage and hour, labor and employment, disability claims and claims related to the Employee Retirement Income Security Act of 1974. Further, the comprehensive safety measures and protocols that we have implemented may not be successful and we could face litigation or other claims related to unsafe working conditions, inadequate protection of our employees, or other similar or related claims. Any claims could also result in litigation against us or regulatory proceedings being brought against us by various federal and state agencies that regulate our business, including the U.S. Equal Employment Opportunity Commission. Often these cases raise complex factual and legal issues and create risks and uncertainties. In addition, stockholders have filed securities class action litigation against us following periods of market volatility. We have been the target of litigation associated with these fluctuations and market volatility and may be the target of this type of litigation in the future.

Defending litigation is costly and can impose a significant burden on management and employees, and there can be no assurances that favorable final outcomes will be obtained. The results of any such litigation, investigations and other legal proceedings are inherently unpredictable and expensive. Although we have insurance, it provides for a substantial retention of liability and is subject to limitations and may not cover a significant portion, or any, of the expenses we may incur or be subject to in connection with shareholder class action or other litigation to which we are party. In addition, plaintiffs may seek, and we may become subject to, preliminary or provisional rulings in the course of any such litigation, including potential preliminary injunctions requiring us to cease some or all of our operations or discontinue selling consigned goods from certain brands. We may decide to settle such lawsuits and disputes on terms that are unfavorable to us. Similarly, if any litigation to which we are a party is resolved adversely, we may be subject to an unfavorable judgment that may not be reversed upon appeal. The terms of such a settlement or judgment may require us to cease some or all of our operations, discontinue selling consigned goods from certain brands or pay substantial amounts to the other party. In addition, we may have to seek a license to continue practices found to be in violation of a third-party's rights, which may not be available on reasonable terms or at all and may significantly increase our operating costs and expenses. As a result, we may also be required to develop alternative practices or discontinue existing practices. The development of alternative practices could require significant effort and expense or may not be feasible. Our business, financial condition or operating results could be adversely affected as a result of an unfavorable resolution of the disputes and litigation referred to above.

Our use and other processing of personal information and other data is subject to laws and obligations relating to privacy and data protection.

Numerous state, federal and international laws, rules and regulations govern privacy, data protection and the collection, use and protection of personal information and other types of data we collect, use, disclose and otherwise process. These laws, rules and regulations are constantly evolving, and we expect that there will continue to be new proposed laws, regulations and industry standards concerning privacy, data protection and information security in the United States, the EU and other jurisdictions. For example, the California Consumer Privacy Act (the "CCPA"), requires covered companies to provide disclosures to California consumers and afford such consumers qualified privacy rights, such as rights of access, deletion and to opt-out of the sales and "sharing" of their personal information, which relates to "cross context behavioral advertising" or more commonly known as targeted advertising. The CCPA was amended by the California Privacy Rights Act (the "CPRA"), which went into effect on January 1, 2023. The CCPA, as amended, removes the exclusion of employment data from its auspices, adds new consumer privacy rights (such as the right to correct inaccurate personal information, or the right to opt out of the "sharing" of personal information for the purposes of cross-context behavioral advertising), expands business's obligations to secure contractual obligations from service providers and third parties, and expands business's obligations with respect to automated opt-out preference signals. The new California Privacy Protection Agency completed its first round of rulemaking but has left many new requirements, such as data privacy and security risk assessments and the right to opt out of certain data profiling activities, for its second round of rulemaking, which began in March 2023 and has yet to be finalized. It remains unclear how these new amendments will be interpreted or when the second round of rulemaking activity will conclude. The CCPA may require us to modify our data processing practices and policies and to incur substantial costs and expenses in an effort to comply. Similarly, several other U.S. states, including Virginia, Connecticut, Colorado, Utah, Delaware, Iowa, Indiana, Maryland, Montana, Minnesota, Nebraska, New Hampshire, New Jersey, Oregon, Rhode Island, Tennessee and Texas have passed similar consumer data privacy laws that impose general data minimization obligations on covered businesses and also extend privacy rights to individuals, including the rights to opt out of targeted advertising and respect automated opt-out preference signals. Finally, the European Commission adopted a General Data Protection Regulation that became fully effective on May 25, 2018, imposing stringent EU data protection requirements. Recent litigation in the EU has driven significant changes in enforcement and interpretation, and we cannot yet fully determine the impact these or future laws, rules and regulations may have on our business or operations.

Given the increased regulatory focus on the use of data for advertising, we may be subject to new and unexpected regulatory interpretations and rulemaking efforts, including proposals for regulation of artificial intelligence or other automated decision making processes. Future laws, regulations, standards and other obligations could, for example, impair our ability to collect or use information that we utilize to create targeted marketing and advertising and offer certain bespoke product features and other capabilities to drive efficiencies in our merchandising operations, thereby impairing our ability to maintain and attract new consignors and buyers, which could have a material adverse effect on our business and operating results.

These laws, rules and regulations may be inconsistent from one jurisdiction to another, subject to differing interpretations and may be interpreted to conflict with our practices. Any failure or perceived failure by us or any third parties with which we do business to comply with these laws, rules and regulations, or with other obligations to which we or such third parties are or may become subject, may result in actions against us by governmental entities, or litigation, and the expenditure of legal and other costs and of substantial time and resources, and fines, penalties or other liabilities.

Further, in view of new or modified federal, state or foreign laws and regulations, industry standards, contractual obligations and other legal obligations, or any changes in their interpretation, we may find it necessary or desirable to change our business activities and practices or to expend significant resources to modify our product or services and otherwise adapt to these changes. We may be unable to make such changes and modifications in a commercially reasonable manner or at all, and our ability to develop new products and features could be limited.

We pay or collect sales taxes in all jurisdictions which require such taxes.

An increasing number of states have considered or adopted laws that impose tax collection obligations on out-of-state sellers of goods. Additionally, in 2018, the Supreme Court of the United States ruled in South Dakota v. Wayfair, Inc. et al (“Wayfair”), that online sellers can be required to collect sales tax despite not having a physical presence in the state of the customer. In response to Wayfair, or otherwise, states or local governments and taxing authorities may adopt, or begin to enforce, laws requiring us to calculate, collect and remit taxes on sales in their jurisdictions. While we currently collect and remit sales taxes in every state that requires sales taxes to be collected, including states where we do not have a physical presence, the adoption of new laws by, or a successful assertion by the taxing authorities of one or more state or local governments requiring us to collect more taxes could result in substantial additional tax liabilities, including taxes on past sales, as well as penalties and interest, which could have a material adverse impact on our business and operating results.

Failure to comply with applicable laws or regulations may subject us to fines, penalties, loss of licensure, registration, facility closures or other governmental enforcement action.

The sale of consigned goods through our online marketplace is subject to regulation, including by regulatory bodies such as the U.S. Consumer Product Safety Commission, the Federal Trade Commission, the U.S. Fish and Wildlife Service and other international, federal, state and local governments and regulatory authorities. These laws and regulations are complex, vary from state to state and change often. We receive luxury goods on consignment from numerous consignors located in all 50 U.S. states and Puerto Rico, and the goods we receive from our consignors may contain materials such as fur, skin, ivory and other exotic animal product components, that are subject to regulation. Our standard consignor terms and conditions require consignors to comply with applicable laws when consigning their goods. Failure of our consignors to comply with applicable laws, regulations and contractual requirements could lead to litigation or other claims against us, resulting in increased legal expenses and costs. Moreover, failure by us to effectively monitor the application of these laws and regulations to our business, and to comply with such laws and regulations, may negatively affect our brand and subject us to penalties and fines.

Numerous U.S. states and municipalities, including California, New York and Florida, have regulations regarding the handling and sale of secondhand goods, and licensing requirements for secondhand dealers. Such government regulations could require us to change the way we conduct business, or our buyers to conduct their purchases in ways that increase costs, such as prohibiting or otherwise restricting the sale or shipment of certain items in some locations. To the extent we fail to comply with requirements for secondhand dealers, we may experience unanticipated permanent or temporary shutdowns of our facilities which may negatively affect our ability to increase the supply of our goods, result in negative publicity and subject us to penalties and fines.

Additionally, the luxury goods our consignors sell could be subject to recalls and other remedial actions and product safety, labeling and licensing concerns may require us to voluntarily remove selected goods from our online marketplace. Such recalls or voluntary removal of goods can result in, among other things, lost sales, diverted resources, potential harm to our reputation and increased customer service costs and legal expenses, which could have a material adverse effect on our operating results.

Application of existing tax laws, rules or regulations are subject to interpretation by taxing authorities.

The application of the income and tax laws is subject to interpretation. Although we believe our tax methodologies are compliant, a taxing authority’s final determination in the event of a tax audit could materially differ from our past or current methods for determining and complying with our tax obligations, including the calculation of our tax provisions and accruals, in which case we may be subject to additional tax liabilities, possibly including interest and penalties. Furthermore, taxing authorities have become more aggressive in their interpretation and enforcement of such laws, rules and regulations over time, as governments are increasingly focused on ways to increase revenues. This has contributed to an increase in audit activity and stricter enforcement by taxing authorities. As such, additional taxes or other assessments may be in excess of our current tax reserves or may require us to modify our business practices to reduce our exposure to additional taxes going forward, any of which may have a material adverse effect on our business, results of operations, financial condition and prospects.

In addition, many of the underlying laws, rules and regulations imposing taxes and other obligations were established before the growth of the Internet and e-commerce. U.S. federal, state and local taxing authorities are currently reviewing the appropriate treatment of companies engaged in Internet commerce and considering changes to existing tax or other laws that could levy sales, income, consumption, use or other taxes relating to our activities, and/or impose obligations on us to collect such taxes. If such tax or other laws, rules or regulations are amended, or if new unfavorable laws, rules or regulations are enacted, the results could increase our tax payments or other obligations, prospectively or retrospectively, subject us to interest and penalties, decrease the demand for our services if we pass on such costs to our buyers or consignors, result in increased costs to update or expand our technical or administrative infrastructure or effectively limit the scope of our business activities if we decided not to conduct business in particular jurisdictions. As a result, these changes may have a material adverse effect on our business, results of operations, financial condition and prospects.

Our ability to use our net operating loss carryforwards and certain other tax attributes may be limited.

We have incurred substantial net operating losses (“NOLs”) during our history. Unused NOLs may carry forward to offset future taxable income if we achieve profitability in the future, unless they expire under applicable tax laws. However, under the rules of Sections 382 and 383 of the Internal Revenue Code of 1986, as amended (the “Code”), if a corporation undergoes an “ownership change,” generally defined as a greater than 50% change (by value) in its equity ownership over a three-year period, the corporation’s ability to use its NOLs and other pre-change tax attributes to offset its post-change taxable income or taxes may be limited. The applicable rules generally operate by focusing on changes in ownership among stockholders considered by the rules as owning, directly or indirectly, 5% or more of the stock of a company, as well as changes in ownership arising from new issuances of stock by the company. In addition, the Tax Cuts and Jobs Act imposes certain limitations on the deduction of NOLs generated in tax years that began on or after January 1, 2018, including a limitation on use of NOLs to offset 80% of taxable income and the disallowance of NOL carryback. Although NOLs generated in tax years before 2018 may still be used to offset future income without limitation, the Tax Cuts and Jobs Act may limit our ability to use our NOLs to offset any future taxable income.

If our internal control over financial reporting or our disclosure controls and procedures are not effective, we may not be able to accurately report our financial results, prevent fraud or file our periodic reports in a timely manner, which may cause investors to lose confidence in our reported financial information.

We are subject to the reporting requirements under the Securities Exchange Act of 1934, as amended (the “Exchange Act”), the Sarbanes-Oxley Act of 2002 (the “Sarbanes-Oxley Act”) and the rules and regulations of the applicable listing standards of The Nasdaq Stock Market. Section 404 of the Sarbanes-Oxley Act requires that we maintain effective internal control over financial reporting and disclosure controls and procedures. In particular, we must perform system and process evaluations, document our controls and perform testing of our key controls over financial reporting to allow for management and our independent public accounting firm to report on the effectiveness of our internal control over financial reporting. If we are not able to continue to comply with the requirements of Section 404 of the Sarbanes-Oxley Act or if we encounter difficulties in the timely and accurate reporting of our financial results, or if we or our independent registered public accounting firm identify deficiencies in our internal control over financial reporting that are deemed to be material weaknesses, our investors could lose confidence in our reported financial information, the market price of our stock may decline and we could be subject to lawsuits, sanctions or investigations by regulatory authorities, which would require additional financial and management resources.

Risks Relating to Ownership of Our Common Stock

The market price of our common stock may be volatile or may decline steeply or suddenly regardless of our operating performance and we may not be able to meet investor or analyst expectations.

If you purchase shares of our common stock, you may not be able to resell those shares at or above the price you paid. The market price of our common stock may fluctuate or decline significantly in response to numerous factors, many of which are beyond our control, including:

- actual or anticipated fluctuations in our consignor or buyer base, the level of consignor and buyer engagement, revenue or other operating results;
- adverse economic and market conditions, including declines in consumer discretionary spending, currency fluctuations, inflation, disruptions in the financial industry and geopolitical instability;
- the research and reports that securities or industry analysts may publish about us, our business, our market or our competitors;
- variations between our actual operating results and the expectations of securities analysts, investors and the financial community;
- any forward-looking financial or operating information we may provide to the public or securities analysts, any changes in this information or our failure to meet expectations based on this information;
- additional shares of our common stock being sold into the market by us or our existing stockholders, or the anticipation of such sales;
- hedging activities by market participants;
- sudden increased or decreased interest in our stock from retail investors;
- substantial fluctuations in the daily trading volume of our common stock;
- announcements by us or our competitors of significant products or features, technical innovations, acquisitions, strategic partnerships, joint ventures or capital commitments;

- changes in operating performance and stock market valuations of companies in our industry, including our competitors;
- price and volume fluctuations in the stock market, including as a result of trends in the economy;
- lawsuits threatened or filed against us;
- developments in new legislation and pending lawsuits or regulatory actions, including interim or final rulings by judicial or regulatory bodies; and
- other events or factors, including those resulting from war or incidents of terrorism, or responses to these events or threats to public health.

In addition, price and volume fluctuations in the stock markets have affected and may continue to affect many online marketplace and other technology companies' stock prices. Stock prices often fluctuate in ways unrelated or disproportionate to the companies' operating performance. Moreover, because of these fluctuations, comparing our operating results on a period-to-period basis may not be meaningful. You should not rely on our past results as an indication of our future performance. This variability and unpredictability could also result in our failing to meet the expectations of industry or financial analysts or investors for any period. If our revenue or operating results fall below the expectations of analysts or investors or below any forecasts we may provide to the market, or if the forecasts we provide to the market are below the expectations of analysts or investors, the price of our common stock could decline substantially. Such a stock price decline could occur even when we have met any previously publicly stated revenue or earnings forecasts that we may provide.

***Short sellers of our stock may be manipulative and may drive down the market price of our common stock*.**

Short selling is the practice of selling securities that the seller does not own but rather has borrowed or intends to borrow from a third party. A short seller hopes to profit from a decline in the value of the securities they are shorting. As it is in the short seller's interest for the price of the stock to decline, some short sellers publish opinions or characterizations regarding the relevant issuer intended to create negative market momentum. Issuers, like us, with securities that have historically had limited trading volumes and/or have been susceptible to relatively high volatility levels can be particularly vulnerable to such short seller attacks. Short selling may also lead to fluctuations of our stock price, particularly if retail investors or others holding "long" positions in our common stock seek to counter short selling activity by purchasing additional shares, thus making it more difficult and more expensive for short sellers to profit. No assurances can be made that declines in the market price of our common stock will not occur in the future in connection with such activity.

Delaware law and provisions in our certificate of incorporation and bylaws could make a merger, tender offer or proxy contest difficult, thereby depressing the trading price of our common stock.

Our certificate of incorporation and bylaws contain provisions that could depress the trading price of our common stock by acting to discourage, delay or prevent a change of control of our company or changes in our management that the stockholders of our company may deem advantageous. These provisions include the following:

- establish a classified board of directors so that not all directors are elected at one time;
- permit the board of directors to establish the number of directors and fill any vacancies and newly-created directorships;
- provide that directors may only be removed for cause;
- require super-majority voting to amend some provisions in our certificate of incorporation and bylaws;
- authorize the issuance of "blank check" preferred stock that our board of directors could use to implement a stockholder rights plan;
- prohibit stockholders from calling special meetings of stockholders;
- prohibit stockholder action by written consent;
- provide that the board of directors is expressly authorized to make, alter or repeal our bylaws;
- restrict the forum for certain litigation against us to Delaware; and
- establish advance notice requirements for nominations for election to our board of directors or for proposing matters that can be acted upon by stockholders at annual stockholder meetings.

Any provision of our certificate of incorporation or bylaws or Delaware law that has the effect of delaying or deterring a change in control could limit the opportunity for our stockholders to receive a premium for their shares of our common stock, and could also affect the price that some investors are willing to pay for our common stock.

Our certificate of incorporation designates the Court of Chancery of the State of Delaware located within the State of Delaware as the exclusive forum for substantially all disputes between us and our stockholders.

Our certificate of incorporation provides that, the Court of Chancery of the State of Delaware is the sole and exclusive forum for any derivative action or proceeding, any action asserting a claim of breach of a fiduciary duty, any action arising pursuant to any provision of the Delaware General Corporation Law ("DGCL"), our certificate of incorporation or our bylaws, any other action that is governed by the internal affairs doctrine or any other action asserting an "internal corporate claim," as defined in the DGCL. These exclusive-forum provisions do not apply to claims under the Securities Act of 1933 (the "Securities Act") or the Exchange Act. Any person or entity purchasing or otherwise acquiring any interest in any of our securities shall be deemed to have notice of and consented to this provision. This exclusive-forum provision may limit a stockholder's ability to bring a claim in a judicial forum of its choosing for disputes with us or our directors, officers or other employees. If a court were to find the exclusive-forum provision to be inapplicable or unenforceable in an action, we may incur additional costs associated with resolving the dispute in other jurisdictions, which could harm our results of operations.

Risks Related to Our Outstanding Notes and Warrants

We have incurred a significant amount of debt and may incur additional indebtedness in the future.

As of September 30, 2024, the principal amount of our 2025 Notes was $26.7 million, the principal amount of our 2028 Notes was $281.0 million, the principal amount of our 2029 Notes was $135.0 million. Additionally, the Company issued warrants to acquire an aggregate of up to 7,894,737 shares of our common stock (subject to adjustment in accordance with the terms of the Warrants). We may be required to use a substantial portion of our cash flows from operations to pay interest and principal on our indebtedness. Such payments will reduce the funds available to use for working capital, capital expenditures and other corporate purposes and limit our ability to obtain additional financing, which may in turn limit our ability to implement our business strategy, heighten our vulnerability to downturns in our business, the industry, or in the general economy, limit our flexibility in planning for, or reacting to, changes in our business and the industry and prevent us from taking advantages of business opportunities as they arise. If we are unable to generate such cash flow to service our debt, we may be required to adopt one or more alternatives, such as selling assets, incurring additional debt, restructuring debt or issuing additional equity on terms that may be onerous or highly dilutive. These alternatives may be insufficient to overcome macroeconomic conditions that may affect us. The duration and severity of macroeconomic uncertainty, any ensuing economic downturns, including economic recession or depression, could directly impact our ability to implement alternatives to service our debt. We may not be able to engage in any of these activities or engage in these activities on desirable terms, which could result in a default on our debt obligations.

The indentures governing our Convertible Senior Notes and 2029 Notes contain restrictions and other provisions regarding events of default that may make it more difficult to execute our strategy or to effectively compete, or that could materially affect our financial position.

Subject to certain exceptions and qualifications, the indenture governing our 2029 Notes (the "2029 Notes Indenture") restricts our ability to, among other things, (i) grant or incur liens securing indebtedness; (ii) incur, assume or guarantee additional indebtedness; (iii) enter into transactions with affiliates; (iv) sell or otherwise dispose of assets, including capital stock of subsidiaries; (v) in the case of the Company and any future guarantor (if any), consolidate, amalgamate or merge with or into, or sell all or substantially all of its assets to, another person; (vi) make certain restricted payments or other investments; and (vii) pay dividends or make other distributions (including loans and other advances). In addition, the 2029 Notes Indenture contains a covenant that provides that the Company may not permit liquidity (calculated as the sum of (a) unused commitments then available to be drawn under any revolving credit facility, delayed draw term loan facility or qualified securitization financing permitted thereunder (after giving effect to any borrowing base or similar limitations), plus (b) the amount of unrestricted cash and cash equivalents held by the Company and its subsidiaries (if any) to be less than $25 million as of the last day of any month. These restrictions, and others set forth in the 2029 Notes Indenture, may make it difficult to successfully execute our business strategy or effectively compete with companies that are not similarly restricted.

The indentures for our Convertible Senior Notes and our 2029 Notes Indenture also set forth certain events of default after which the 2025 Notes, 2028 Notes or 2029 Notes may be declared immediately due and payable and set forth certain types of bankruptcy or insolvency events of default involving the Company or its subsidiaries. Such acceleration of our debt could have a material adverse effect on our liquidity if we are unable to negotiate mutually acceptable terms with the holders of the 2025 Notes, 2028 Notes or 2029 Notes or if alternate funding is not available to us. Furthermore, if we are unable to repay the 2025 Notes, 2028 Notes or 2029 Notes upon an acceleration or otherwise, we could be forced into bankruptcy or liquidation.

Transactions relating to our Convertible Senior Notes or Warrants may dilute the ownership interest of our stockholders.

The conversion or exercise of some or all of our outstanding Convertible Senior Notes or Warrants would dilute the ownership interests of existing stockholders to the extent we deliver shares upon conversion or exercise of any such Convertible Senior Notes or Warrants. If the Convertible Senior Notes or Warrants become convertible or exercisable under the terms of the applicable indenture or warrant agency agreement, and if holders subsequently elect to convert or exercise the Convertible Senior Notes or Warrants, we could be required to deliver to them a significant number of shares of our common stock. Any sales or anticipated sales in the public market of the common stock issuable upon conversion of the Convertible Senior Notes or exercise of the Warrants could adversely affect prevailing market prices for our common stock. In addition, the existence of the Convertible Senior Notes and Warrants may encourage short selling by market participants because the conversion of the Convertible Senior Notes or Warrants could be used to satisfy short positions.

The conversion of the Convertible Senior Notes or the cash settlement of the Warrants, if triggered, may adversely affect our financial condition and operating results.

In the event the conditional conversion feature of the Convertible Senior Notes is triggered, holders of the Convertible Senior Notes will be entitled to convert their Convertible Senior Notes at any time during specified periods at their option. If one or more holders elect to convert their Convertible Senior Notes, unless we elect to satisfy our conversion obligation by delivering shares of our common stock (other than paying cash in lieu of delivering any fractional share), we would be required to settle a portion or all of our conversion obligation in cash, which could adversely affect our liquidity. In addition, even if holders of the Convertible Senior Notes do not elect to convert their Convertible Senior Notes, we could be required under applicable accounting rules to reclassify all or a portion of the outstanding principal of the Convertible Senior Notes as a current rather than long-term liability, which could result in a material reduction in our net working capital. Further, in the event of a fundamental change, which could occur outside the Company’s control, the Warrants may be required to be settled in cash instead of delivering shares, which could result in a material reduction in our net working capital.

The accounting method for the Warrants materially affects our reported financial results.

We account for our outstanding Warrants as liabilities at fair value on our balance sheet. The Warrants are subject to remeasurement at each balance sheet date and any change in fair value is recognized as a component of earnings in each period for which our earnings are reported. We will continue to adjust the liability for changes in fair value until the earlier of exercise or expiration of the Warrants. The volatility introduced by changes in fair value on earnings may have an adverse effect on our quarterly and annual financial results.

The accounting method for the Convertible Senior Notes materially affects our reported financial results.

Prior to the adoption of ASU 2020-06, under Financial Accounting Standards Board (“FASB”) Accounting Standards Codification (“ASC”) 470-20, Debt with Conversion and Other Options, we accounted for the liability and equity components of the Convertible Senior Notes separately because the Convertible Senior Notes may be settled entirely or partially in cash upon conversion in a manner that reflects our economic interest cost. This bifurcation resulted in a debt discount for Convertible Senior Notes. See “Note 2—Summary of Significant Accounting Policies— Convertible Senior Notes.” We used the effective interest method to amortize the debt discount to interest expense over the amortization period, which is the expected life of the Convertible Senior Notes. However, we adopted ASU 2020-06 as of January 1, 2022, under which we now account for the Convertible Senior Notes as a single liability measured at their amortized cost. Upon adoption, we recorded a cumulative effect adjustment of $13.4 million as a reduction to accumulated deficit and a reduction to additional paid in capital of $112.1 million related to amounts attributable to the value of the conversion options that had previously been recorded in equity. Additionally, we recorded an increase to the Convertible Senior Notes balance by an aggregate amount of $98.6 million as a result of the reversal of the separation of the convertible debt between debt and equity. As a result of the adoption of ASU 2020-06, we also derecognized $27.5 million of deferred tax liabilities and recognized $0.2 million of deferred tax assets, resulting in a $27.7 million increase to the net deferred tax assets and a corresponding increase of $27.7 million in the offsetting valuation allowance.

The adoption of this standard also significantly decreased the amount of non-cash interest expense to be recognized in periods beginning on or after January 1, 2022 as a result of eliminating the discount associated with the equity component. In addition, following adoption, we are required to calculate diluted earnings per share using the “if converted” method, which assumes that all of the Convertible Senior Notes were converted solely into shares of common stock at the beginning of the reporting period, unless the result would be anti-dilutive, which can adversely affect our diluted earnings per share. Future amendments to the accounting treatment for the Convertible Senior Notes, could adversely affect our financial results, the trading price of our common stock and the trading price of the Convertible Senior Notes.

The capped call transactions may affect the value of the Convertible Senior Notes and our common stock.

In connection with the pricing of the Convertible Senior Notes, we entered into privately negotiated capped call transactions with certain counterparties. The capped call transactions cover the number of shares of our common stock initially underlying the Convertible Senior Notes. The capped call transactions are expected to offset the potential dilution to our common stock upon any conversion of the Convertible Senior Notes. In connection with establishing their initial hedges of the capped call transactions, the counterparties or their respective affiliates entered into various derivative transactions with respect to our common stock. The counterparties or their respective affiliates may modify their hedge positions by entering into or unwinding various derivatives with respect to our common stock and/or purchasing or selling our common stock or other securities of ours in secondary market transactions prior to the maturity of the Convertible Senior Notes (and are likely to do so on each exercise date of the capped call transactions), or following any termination of any portion of the capped call transactions in connection with any repurchase, redemption or early conversions of the Convertible Senior Notes or otherwise. This activity could also cause or avoid an increase or a decrease in the market price of our common stock.

Item 2. Unregistered Sales of Equity Securities and Use of Proceeds.

There were no unregistered sales of equity securities during the third quarter of 2024.

Use of Proceeds from our IPO

The offer and sale of the shares in the IPO was registered under the Securities Act pursuant to a registration statement on Form S-1 (File No.333-231891), which was declared effective by the SEC on June 27, 2019. The remainder of the information required by this item regarding the use of our initial public offering proceeds has been omitted pursuant to SEC rules because such information has not changed since our last periodic report was filed.

Item 3. Defaults Upon Senior Securities.

Not applicable.

Item 4. Mine Safety Disclosures.

Not applicable.

Item 5. Other Information.

Severance and Change of Control Agreements

On October 29, 2024, the Compensation, Diversity and Inclusion Committee of the Board of Directors of the Company approved an amended and restated Severance and Change in Control Agreement (the “A&R Severance Agreement”) for our executive officers, including our named executive officers, other than Rati Sahi Levesque, and each of Ajay Gopal, Todd Suko and Chatelle Lynch entered into an A&R Severance Agreement as of such date.

The A&R Severance Agreements provide for the following severance benefits: (i) upon a qualifying termination during the three months prior to or twelve months following a change in control of the Company, (A) a lump sum cash severance payment equal to twelve months of the executive’s annual salary plus target bonus (the “Severance Payment”), (B) a prorated target bonus for the year of termination (the “Prorated Bonus”), (C) a lump sum cash payment equal to the employer subsidy portion of the executive’s monthly healthcare insurance premiums for a period of twelve months (the “Healthcare Subsidy Payment”), and (D) accelerated vesting of all outstanding and unvested equity awards based on target performance or (ii) upon a qualifying termination of employment at any other time, the Severance Payment, the Prorated Bonus and the Healthcare Subsidy Payment.

The form of A&R Severance Agreement is filed as Exhibit 10.4 to this quarterly report on Form 10-Q and is incorporated herein by reference.

Item 6. Exhibits.

Furnish the exhibits required by Item 601 of Regulation S-K (§ 229.601 of this chapter).

Exhibit Number	Description
10.1†*	Letter re: Promotion to President and Chief Executive Officer, dated October 28, 2024, by and between The RealReal, Inc. and Rati Sahi Levesque.
10.2†*	Amended and Restated Severance and Change-in-Control Agreement, dated October 28, 2024, by and between The RealReal, Inc. and Rati Sahi Levesque.
10.3†*	Separation Agreement, dated October 28, 2024, by and between The RealReal, Inc. and John E. Koryl.
10.4†*	Form of Severance and Change in Control Agreement approved by the Company's board of directors on October 29, 2024.
31.1*	Certification of Principal Executive Officer Pursuant to Rules 13a-14(a) and 15d-14(a) under the Securities Exchange Act of 1934, as Adopted Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
31.2*	Certification of Principal Financial Officer Pursuant to Rules 13a-14(a) and 15d-14(a) under the Securities Exchange Act of 1934, as Adopted Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
32.1*	Certification of Principal Executive Officer Pursuant to 18 U.S.C. Section 1350, as Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
32.2*	Certification of Principal Financial Officer Pursuant to 18 U.S.C. Section 1350, as Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
101.INS	Inline XBRL Instance Document: the instance document does not appear in the Interactive Data File because its XBRL tags are embedded within the Inline XBRL document
101.SCH	Inline XBRL Taxonomy Extension Schema Document
101.CAL	Inline XBRL Taxonomy Extension Calculation Linkbase Document
101.DEF	Inline XBRL Taxonomy Extension Definition Linkbase Document
101.LAB	Inline XBRL Taxonomy Extension Label Linkbase Document
101.PRE	Inline XBRL Taxonomy Extension Presentation Linkbase Document
104	Inline XBRL for the cover page of this Quarterly Report on Form 10-Q, included in the Exhibit 101 Inline XBRL Document Set

* Filed herewith.

† Indicates management contract or compensatory plan.

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

The RealReal, Inc.

Date: November 4, 2024	By:	/s/ Rati Sahi Levesque
		Rati Sahi Levesque
		Chief Executive Officer
Date: November 4, 2024	By:	/s/ Ajay Madan Gopal
		Ajay Madan Gopal
		Chief Financial Officer

Exhibit 10.1

October 28, 2024
Rati Sahi Levesque
Via E-mail

Re: Promotion to President and Chief Executive Officer

Dear Rati:

Congratulations! As discussed, this letter confirms your appointment to the position of President and Chief Executive Officer of The RealReal, Inc. ("***TRR***"), effective as of October 28, 2024 (the "***Promotion Date***"). In your role as President and Chief Executive Officer, you will also be appointed as a member of TRR's Board of Directors (the "***Board***"), effective as of the Promotion Date. You will report solely to the Board in your capacity as President and Chief Executive Officer, and all employees will report directly or indirectly to you.

You will be expected to perform the duties and responsibilities customarily associated with the role of President and Chief Executive Officer and other reasonable duties and responsibilities as may be assigned to you by the Board from time to time. Except as approved by our Chief Legal Officer as it relates to external board or advisory roles, or with respect to any board of directors positions that you hold as of the Promotion Date, you agree to devote your full time and best efforts to the performance of your duties at TRR and you agree, during your employment as President and Chief Executive Officer, not to directly or indirectly engage or participate in any other employment, occupation, or other activities which may conflict with your obligations to TRR or the best interests of TRR,

Base Compensation. With effect from the Promotion Date, your base salary to the annual rate of $700,000, less applicable withholdings and deductions. Wages are paid bi-weekly in accordance with TRR's normal payroll procedures. Your base salary will be reviewed by the Board beginning in 2025 and annually thereafter.

Work Location. You will continue to work from TRR's headquarters in San Francisco, California, with regular travel to TRR's other business locations. Your business travel will be reimbursed by TRR in accordance with its travel and expense policy, as in effect from time to time.

Discretionary Bonus. You will continue to be eligible to participate in The RealReal, Inc. Discretionary Bonus Plan (the "***Bonus Plan***"), as it may be amended from time to time. Pursuant to the Bonus Plan or any successor plan, you will be provided with the opportunity to earn a cash, discretionary incentive bonus expressed as a percentage of your salary for the relevant period (annual). The actual amount of your bonus for any year will be based on achievement of company and/or individual performance as set in advance by the Board in consultation with you. Determination of bonuses is at the sole and absolute discretion of the Board. Effective as of the Promotion Date, your target bonus opportunity will be increased to 100% of your base salary.
For TRR's fiscal year 2024, your target bonus opportunity will represent a blend of your target bonus opportunity immediately before and as of the Promotion Date, taking into account the

portion of the year that you served in your prior role and the portion of the year that you will serve as President and Chief Executive Officer. Payment of any bonus is subject to your continuous employment through the date of payment, except as set forth in the A&R Severance Agreement (defined below) or otherwise provided by applicable law.

Benefits. You will also continue to be eligible to receive employee benefits (medical, dental, Discretionary Time Off), according to the terms of the applicable TRR policy or benefit plan, as the same may be amended from time to time.

Equity Compensation. In connection with your promotion to the role of President and Chief Executive Officer, at the first regularly scheduled meeting of the compensation, diversity and inclusion committee of the Board (the "***Compensation Committee***") after the Promotion Date (subject to your continued employment through such date), you will be granted two incremental equity awards, as follows: (a) 1,250,000 time-based restricted stock units ("***RSUs***"), which vest in 12 substantially equal quarterly installments following the vesting commencement date approved by the Compensation Committee, subject to your continuous employment with TRR through the applicable vesting date; and (b) 1,250,000 performance-based restricted stock units ("***PSUs***"), which PSUs will have the same performance conditions, service-based vesting requirements, and other terms and conditions as the PSUs granted to you by the Company as part of your 2024 annual equity awards in your prior role, except that the service-based vesting date will be the third anniversary of the date of grant.

These awards will be consistent with the terms and conditions of TRR's 2019 Equity Incentive Plan (the "***2019 Plan***") and the applicable executive form of award agreements. Following the vesting of the RSUs or PSUs, as applicable, you will receive one share of TRR common stock for each vested RSU or PSU, as applicable, subject to tax withholding. No right to any stock is earned or accrued until such time that vesting occurs, nor does the grant confer any right to continued vesting or employment.

You will also continue to be eligible to participate in the 2019 Plan (or any successor long term incentive plan) on an annual basis and be eligible to receive annual grants of long-term incentive awards at a level commensurate with your position.

Recoverable Promotion Bonus. You will also be paid a one-time promotion bonus of $300,000.00 ("***Promotion Bonus***"), payable on the first regularly scheduled pay date following your Promotion Date, less applicable withholdings and deductions. If your employment is terminated by TRR for "cause" or you resign without "good reason" (each term, as defined in the A&R Severance Agreement (as defined below)): (a) on or prior to the first anniversary of the Promotion Date, you agree to repay 100% of the Promotion Bonus to TRR within thirty (30) days of your termination of employment; or (b) following the first anniversary of the Promotion Date but on or before the second anniversary of the Promotion Date, you agree to repay 50% of the Promotion Bonus to TRR within thirty (30) days of your termination of employment, in either case, without the necessity of any demand from TRR. You further agree, to the maximum extent permitted by law, that TRR shall be able to recover any legal fees incurred to recover these funds, should TRR prevail in such matter before an arbitrator or court of competent jurisdiction, to the maximum extent permitted by law.

Severance. The Severance and Change-in-Control Agreement between you and the Company dated April 13, 2022, is being amended and restated (the "***A&R Severance Agreement***") concurrently with the signing of this promotion letter to incorporate an increase in the level of your severance benefits reflecting your promotion to the role of President and Chief Executive Officer.

Company Policies. As a TRR employee, you are required to continue to abide by TRR's rules and policies. Company policies may change from time to time in accordance with applicable laws and in TRR's sole discretion.

Clawback Provisions. All incentive compensation paid to you pursuant to this promotion letter or otherwise in connection with your employment with TRR shall be subject to (a) TRR's clawback policy(ies) and any other clawback, forfeiture or other similar policy adopted by TRR and as in effect from time to time and (b) applicable law, regulation or stock exchange listing requirement. By signing this promotion letter, you are deemed to have acknowledged and consented to TRR's clawback policy(ies) and TRR's application, implementation and enforcement of any clawback, forfeiture or other similar policy adopted by TRR and any provision of applicable law or stock exchange listing requirement relating to reduction cancellation, forfeiture or recoupment and to have agreed that TRR may take such actions as may be necessary to effectuate any such policy, requirement or applicable law, without further consideration or action.

Business Protection and Arbitration Agreement. Your existing Business Protection and Arbitration Agreement with TRR remains in full force and effect.

At-Will Employment. Your employment is at-will, which means that either TRR or you can terminate your employment at any time with or without notice and with or without cause.

Severability/Construction. To the extent any provision of this promotion letter or application of it to any person, place, or circumstance shall be determined to be invalid, unlawful or otherwise unenforceable, in whole or in part, the remainder of this promotion letter shall remain in full force and effect, and this agreement shall be reformed to the extent necessary to carry out its provisions to the greatest extent possible.

Entire Agreement. This promotion letter, together with the A&R Severance Agreement, sets forth the terms of your promotion to the role of President and Chief Executive Officer. This promotion letter and the at-will nature of your employment may not be modified or amended except by a written agreement signed by the Chief Legal Officer of TRR and you.

Once again, congratulations, and we look forward to continuing to work with you in your new role as President and Chief Executive Officer of The RealReal, Inc.

[Signature Page Follows.]

Sincerely,

/s/ Karen Katz _____________
By: Karen Katz
Title: Chairperson

The RealReal, Inc.

Agreed to and accepted:

Signature: /s/ Rati Sahi Levesque

Printed Name: Rati Sahi Levesque

[Signature Page to Promotion Letter]

AMENDED AND RESTATED SEVERANCE AND CHANGE-IN-CONTROL AGREEMENT

THIS AMENDED AND RESTATED SEVERANCE AND CHANGE-IN-CONTROL AGREEMENT (this "**Agreement**"), dated as of October 28, 2024 (the "**Effective Date**"), is made by and between The RealReal, Inc., a corporation organized under the laws of the State of Delaware (the "Company") and Rati Sahi Levesque ("**Executive**").

WHEREAS, Executive and the Company entered in that certain Severance and Change in Control Agreement dated as of April 13, 2022 (the "**Prior Agreement**");

WHEREAS, Executive was appointed as President and Chief Executive Officer of the Company on October 28, 2024, and in connection therewith the Board of Directors of the Company (the "**Board**") and Executive desire to amend and restate the Prior Agreement;

WHEREAS, the Board has determined that it is in the best interests of the Company and its stockholders to assure that the Company will have the continued dedication and objectivity of Executive, notwithstanding the possibility, threat or occurrence of a termination of employment or the occurrence of a Change in Control (as defined below) of the Company;

WHEREAS, the Board believes that it is in the best interests of the Company and its stockholders to provide Executive with an incentive to continue Executive's employment and to motivate Executive to maximize the value of the Company for the benefit of its stockholders; and

WHEREAS, the Board further believes that it is imperative to provide Executive with certain severance benefits upon termination of Executive's employment, and with certain additional benefits upon a termination of employment in connection with a Change in Control of the Company, to provide Executive with enhanced financial security and incentive to remain with the Company;

NOW, THEREFORE, in consideration of the promises, agreements and conditions contained in this Agreement, the Company and Executive agree as follows:

SECTION I
DEFINITIONS

For the purposes of this Agreement the following definitions shall apply:

I.1 "**Accrued Obligations**" means (a) any unpaid base salary through the Date of Termination, payable within 30 days following the Date of Termination, or on such earlier date as may be required by applicable law; (b) any Annual Bonus for a prior year earned but unpaid, payable at the time such bonuses would have been paid if Executive was still employed with the Company; (c) reimbursement for any unreimbursed business expenses incurred through the Date of Termination, payable in accordance with the Company's policy; and (d) all vested benefits under the Company's retirement, health and welfare and equity-based employee benefit plans to which Executive is entitled, payable in accordance with the terms of such plan or program.

I.2 “**Affiliate**” means any entity controlled by, controlling, or under common control with, the Company.

I.3 “**Annual Bonus**” means Executive’s annual bonus under the Company’s or an Affiliate’s annual executive bonus program, as in effect from time to time, under which Executive is covered.

I.4 “**Annual Salary**” means Executive’s annual base salary, exclusive of any bonus pay, commissions or other additional compensation, in effect on the Date of Termination.

I.5 “**Cause**” means the occurrence of any one or more of the following events:

(a) Executive’s act, or failure to act, that was performed in bad faith and to the material detriment of the Company or any of its Affiliates;

(b) Executive’s material violation of any law or regulation applicable to the business of the Company or any of its Affiliates;

(c) Executive’s material violation of a material Company policy;

(d) Executive’s material breach of any confidentiality agreement or invention assignment agreement between Executive and the Company (or any Affiliate of the Company); or

(e) Executive’s admission or conviction of, or entering a plea of guilty or nolo contendere to, a felony or Executive’s commission of any act of moral turpitude.

I.6 “**Change in Control**” means the occurrence, in a single transaction or in a series of related transactions during the Term, of any one or more of the following events:

(a) An acquisition (other than directly from the Company) of any voting securities of the Company (the “**Voting Securities**”) by any “Person” (having the meaning ascribed to such term in Section 3(a)(9) of the Exchange Act, and as used in Sections 13(d) and 14(d) thereof, including a “group” as defined in Section 13(d)) immediately after which such Person has beneficial ownership (within the meaning of Rule 13d-3 promulgated under the Exchange Act) (“**Beneficial Ownership**” and/or “**Beneficially Owned**”) of 50% or more of the combined voting power of the Company’s then outstanding Voting Securities; *provided*, that in determining whether a Change in Control has occurred, Voting Securities which are acquired in a Non-Control Acquisition shall not constitute an acquisition which would cause a Change in Control. For purposes of this Agreement, the term “**Non-Control Acquisition**” shall mean an acquisition by (i) the Company or any Subsidiary; (ii) an employee benefit plan (or a trust forming a part thereof) maintained by the Company or any Subsidiary; or (iii) any Person in connection with a Non-Control Transaction (as hereinafter defined);

(b) The individuals who, as of the Effective Date, are members of the Board (the “**Incumbent Board**”) cease for any reason to constitute at least a majority of the Board; *provided*, that if the election, or nomination for election by the Company’s stockholders, of any new director was approved by a vote of at least a majority of the Incumbent Board, such new director shall, for purposes of this clause (b), be considered a member of the Incumbent Board; and *provided*, *further*, that no individual shall be considered a member of the Incumbent Board if such individual initially assumed office as a result of either an actual or threatened election contest (as described in former Rule 14(a)-11 promulgated under the Exchange Act) ("**Election Contest**") or other actual or threatened solicitation of proxies or consents by or on behalf of a Person other than the Board (a "**Proxy Contest**"), including by reason of any agreement intended to avoid or settle any Election Contest or Proxy Contest;

(c) Consummation of a merger, consolidation or reorganization involving the Company, unless such transaction is a Non-Control Transaction. For purposes of this Agreement, the term "**Non-Control Transaction**" shall mean a merger, consolidation or reorganization of the Company in which: (i) the stockholders of the Company, immediately before such merger, consolidation or reorganization, own, directly or indirectly immediately following such merger, consolidation or reorganization, at least 50% of the combined voting power of the voting securities of the corporation or entity resulting from such merger, consolidation or reorganization (the "**Surviving Company**") over which any Person has Beneficial Ownership in substantially the same proportion as their Beneficial Ownership of the Voting Securities immediately before such merger, consolidation or reorganization; (ii) the individuals who were members of the Incumbent Board immediately prior to the execution of the agreement providing for such merger, consolidation or reorganization constitute at least a majority of the members of the board of directors or equivalent body of the Surviving Company; and (iii) no Person (other than the Company, any Subsidiary, any employee benefit plan (or any trust forming a part thereof) maintained by the Company, the Surviving Company or any Person who, immediately prior to such merger, consolidation or reorganization, had Beneficial Ownership of 50% or more of the then outstanding Voting Securities) has Beneficial Ownership of 50% or more of the combined voting power of the Surviving Company's then outstanding voting securities; or

(d) The sale or other disposition of all or substantially all of the assets of the Company to any Person (other than a transfer to a Subsidiary).

Notwithstanding the foregoing, a Change in Control shall not be deemed to occur solely because any Person (the "**Subject Person**") acquired Beneficial Ownership of more than the permitted amount of the outstanding Voting Securities as a result of the acquisition of Voting Securities by the Company which, by reducing the number of Voting Securities outstanding, increases the proportional number of shares Beneficially Owned by the Subject Person; *provided*, that if a Change in Control would occur (but for the operation of this sentence) as a result of the acquisition of Voting Securities by the Company, and after such share acquisition by the Company, the Subject Person becomes the Beneficial Owner of any additional Voting Securities which increases the percentage of the then outstanding Voting Securities Beneficially Owned by the Subject Person, then a Change in Control shall occur. Furthermore, to the extent necessary to ensure compliance with Section 409A, a Change in Control will only be deemed to occur for purposes of this Agreement to the extent it is also a change in control event as defined in Treasury Regulation Section 1.409A-3(i)(5)(i).

I.7 "**Change in Control Protection Period**" means the period commencing three (3) months prior to a Change in Control that occurs during the Term and ending twelve (12) months after a Change in Control that occurs during the Term.

I.8 "**COBRA**" means the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended from time to time.

I.9 "**Code**" means the Internal Revenue Code of 1986, as amended from time to time, and the regulations issued thereunder.

I.10 "**Date of Termination**" means the effective date of Executive's termination of employment and service with the Company and its Affiliates.

I.11 "**Exchange Act**" means the Securities Exchange Act of 1934, as amended from time to time, and the regulations issued thereunder.

I.12 "**Good Reason**" means any of the following:

(a) A requirement by the Company or an Affiliate of the Company that Executive relocate or commute to a location more than 50 miles away from Executive's work location as of the Effective Date, unless Executive has consented in writing to such requirement;

(b) A material reduction by the Company in Executive's base salary (other than a reduction in connection with substantially proportionate reductions to the base salary of substantially all other executives of the Company), unless Executive has consented in writing to such reduction; or

(c) A material diminution in Executive's authority, duties or responsibilities inconsistent with Executive's authority, duties or responsibilities immediately prior to such material diminution (including any material diminution in Executive's authority, duties or responsibilities occurring as a result of a corporate transaction, measured in the context of the combined organization resulting from such transaction), unless Executive has consented in writing to such diminution.

Good Reason shall not exist unless Executive gives the Company notice of the event giving rise to Good Reason within sixty (60) days of the date Executive has knowledge of such event. Such notice shall specifically delineate such claimed breach and shall inform the Company that it is required to cure such breach within ninety (90) days (the "**Cure Period**") after such notice is given. If such breach is not so cured, Executive may resign for Good Reason within three (3) months following the end of the Cure Period. If such breach is cured within the Cure Period or if such breach is not cured but Executive does not resign for Good Reason within three (3) months following the end of the Cure Period, Good Reason shall not exist hereunder.

I.13 "**Section 409A**" means Section 409A of the Code and any regulations or other formal guidance promulgated thereunder.

I.14 “**Section 280G**” means Section 280G of the Code and any regulations or other formal guidance promulgated thereunder.

I.15 “**Subsidiary**” means any corporation, limited liability company, partnership, joint venture, or similar entity in which the Company owns, directly or indirectly, an equity interest possessing more than 50% of the combined voting power of the total outstanding equity interests of such entity.

I.16 “**Target Bonus**” means Executive’s target Annual Bonus under the Company’s or Affiliate’s annual bonus program, as in effect from time to time, under which Executive is covered.

I.17 “**Term**” means the thirty-six (36)-month period beginning on the Effective Date and ending on the thirty-six (36)-month anniversary of the Effective Date (the “Initial Term”); provided, however, that the Term will be automatically extended for successive twelve (12) month periods at the end of the Initial Term and any successive twelve (12) month period unless the Company provides at least sixty (60) days’ notice in advance of the end of the Initial Term or any subsequent twelve (12)- month period of its decision to terminate the Agreement at the end of the Term.

SECTION II
SEVERANCE PAYMENTS AND BENEFITS

II.1 Change in Control Protection Period. If, during a Change in Control Protection Period, the Company terminates Executive’s employment without Cause or Executive terminates his employment for Good Reason, then the Company shall pay or provide the following amounts and benefits to Executive, in addition to the Accrued Obligations, subject to the occurrence of the Change in Control:

(a) Severance Payment. Executive will be paid an amount equal to 1.5 times the sum of (i) Executive’s Annual Salary in effect immediately prior to the Date of Termination (or, if greater, immediately prior to the Change in Control Protection Period) *plus* (ii) Executive’s Target Bonus in effect immediately prior to the Date of Termination (or, if greater, immediately prior to the Change in Control Protection Period), in a lump sum within sixty (60) days following the Date of Termination.

(b) Bonus for Year of Termination. Executive will be paid a pro-rata portion of the Target Bonus in effect on the Date of Termination (or, if greater, immediately prior to the Change in Control Protection Period), determined by multiplying the amount of the Target Bonus by a fraction, the numerator of which is the number of days from January 1 of the year during which the Date of Termination occurs to the Date of Termination and the denominator of which is three hundred and sixty-five (365). The pro-rated bonus shall be paid in a lump sum within sixty (60) days following the Date of Termination.

(c) COBRA Equivalent. Whether or not Executive elects coverage under COBRA under any group health plan of the Company or an Affiliate, the Company will pay

Executive a taxable lump sum equal to the portion of the monthly cost of Executive's group health plan coverage, as in effect on the Date of Termination, that is subsidized by the Company for similarly situated active employees as of the Date of Termination multiplied by eighteen (18). The COBRA equivalent payment shall be made in a lump sum within sixty (60) days following the Date of Termination.

(d) Equity Awards. Notwithstanding anything to the contrary in any equity plan of the Company or its Affiliates or Executive's award agreement thereunder, any and all outstanding equity awards granted to Executive under any equity plan of the Company or its Affiliates will be treated as follows: (i) all time-based vesting conditions applicable to such awards will be treated as satisfied in full and shall lapse on the Date of Termination; and (ii) any performance-based vesting conditions applicable to such awards shall be deemed to have been satisfied at target through the Date of Termination. Such awards will be settled in accordance with, and otherwise be subject to, the terms of the equity plan of the Company or its Affiliates and Executive's award agreement thereunder; *provided*, however, that any vested restricted stock units that are not subject to Section 409A shall be settled upon Executive within sixty (60) days following the Date of Termination.

II.2 Outside of Change in Control Protection Period. If the Company terminates Executive's employment without Cause, or Executive terminates employment for Good Reason, in either case other than during a Change in Control Protection Period, then the Company shall pay or provide the following amounts and benefits to Executive, in addition to the Accrued Obligations:

(a) Severance. Executive will be paid an amount equal to 1.5 times the sum of (i) Executive's Annual Salary in effect immediately prior to the Date of Termination *plus* (ii) Executive's Target Bonus in effect immediately prior to the Date of Termination, in a lump sum within sixty (60) days following the Date of Termination.

(b) Bonus for Year of Termination. Executive will be paid a pro-rata portion of the Target Bonus in effect on the Date of Termination, determined by multiplying the amount of the Target Bonus by a fraction, the numerator of which is the number of days from January 1 of the year during which the Date of Termination occurs to the Date of Termination and the denominator of which is three hundred and sixty-five (365). The pro-rated bonus shall be paid in a lump sum within sixty (6o) days following the Date of Termination.

(c) COBRA Equivalent. Whether or not Executive elects coverage under COBRA under any group health plan of the Company or an Affiliate, the Company will pay Executive a taxable lump sum equal to the portion of the monthly cost of Executive's group health plan coverage, as in effect on the Date of Termination, that is subsidized by the Company for similarly situated active employees as of the Date of Termination multiplied by eighteen (18). The COBRA equivalent payment shall be made in a lump sum within sixty (60) days following the Date of Termination.

(d) Equity Awards. All outstanding equity awards granted to Executive under any equity plan of the Company or its Affiliates shall vest, be forfeited or settled in accordance with the terms of the equity plan of the Company or its Affiliates and the applicable award agreements.

II.3 Termination for Any Other Reason. If Executive's employment and service with the Company and its Affiliates is terminated for any reason other than by the Company without Cause or by Executive for Good Reason, including due to Executive's retirement, death or disability, no amounts or benefits will be payable or provided under this Agreement, except the Accrued Amounts.

II.4 Release. Notwithstanding anything contained in this Agreement to the contrary, the Company shall not be obligated to provide any payments or benefits to Executive under Section 2.1 or Section 2.2 hereof other than the Accrued Obligations unless Executive executes and delivers to the Company a general release of claims in favor of the Company and its Affiliates and their respective employees, officers and directors in such form as is reasonably requested by the Company, and such release becomes irrevocable by its terms, no later than sixty (60) days after the Date of Termination.

II.5 No Duplication. In no event shall payments and benefits provided in accordance with this Agreement be made in respect of more than one of Section 2.1 or 2.2.

II.6 Offset. Notwithstanding the provisions of this Section II, the Company's obligation to make the severance payments and benefits described herein shall be reduced by any amounts owed by Executive to the Company and its Affiliates; *provided*, however, that offsets of amounts owed by Executive that are nonqualified deferred compensation (within the meaning of Section 409A) shall only be made in accordance with Section 409A.

SECTION III
TAX INFORMATION

III.1 Tax Withholding. The Company shall deduct from payments to be paid to Executive or any beneficiary all federal, state and local withholding and other taxes and charges required to be deducted under applicable law.

III.2 Section 409A.

(a) The intent of the parties is that payments and benefits under this Agreement shall comply with or be exempt from Section 409A, and this Agreement shall be interpreted in accordance with such intentions. Notwithstanding the foregoing, neither the Company or its Affiliates nor their respective directors, officers, employees or advisers shall be held liable for any taxes, interest, penalties or other monetary amounts owed by Executive (or any other individual claiming a benefit through Executive) as a result of this Agreement.

(b) A termination of employment shall not be deemed to have occurred for purposes of any provision of this Agreement providing for the payment of any amounts or benefits subject to Section 409A upon or following a termination of employment unless such termination is also a "separation from service," within the meaning of Section 409A, from the

Company, and references to the "Date of Termination," a "termination," "termination of employment" or like terms shall mean "separation from service," within the meaning of Section 409A, from the Company.

(c) Whenever a payment under this Agreement specifies a payment period with reference to a number of days, the actual date of payment within the specified period shall be within the sole discretion of the Company. In the event the payment period under this Agreement commences in one calendar year and ends in a second calendar year, the payment shall not be paid until the second calendar year. For purposes of Section 409A, Executive's right to receive installment payments pursuant to this Agreement shall be treated as a right to receive a series of separate and distinct payments.

(d) If Executive is deemed on the Date of Termination to be a "specified employee" within the meaning of that term under Section 409A(a)(2)(B) of the Code, then with regard to any payment or benefit subject to Section 409A that is payable on account of a "separation from service," such payment or benefit shall be made or provided at the date which is the earlier of (i) the expiration of the six (6)-month period measured from the date of such "separation from service" of Executive; and (ii) the date of Executive's death (the "**Delay Period**"). Upon the expiration of the Delay Period, all payments and benefits delayed pursuant to this section (whether they would have otherwise been payable in a single sum or in installments in the absence of such delay) shall be paid to Executive in a lump sum without interest, and any remaining payments and benefits due under this Agreement shall be paid or provided in accordance with the normal payment dates specified for them herein.

III.3 Section 280G.

(a) Anything in this Agreement to the contrary notwithstanding, in the event that the amount of any compensation, payment or distribution by the Company to or for the benefit of Executive, whether paid or payable or distributed or distributable pursuant to the terms of this Agreement or otherwise, calculated in a manner consistent with Section 280G (the "**Aggregate Payments**"), would be subject to the excise tax imposed by Section 4999 of the Code, then the Aggregate Payments shall be reduced (but not below zero) so that the sum of all of the Aggregate Payments shall be $1.00 less than the amount at which Executive becomes subject to the excise tax imposed by Section 4999 of the Code; *provided that* such reduction shall only occur if it would result in Executive receiving a higher After-Tax Amount (as defined below) than Executive would receive if the Aggregate Payments were not subject to such reduction. In such event, the Aggregate Payments shall be reduced in the following order, in each case, in reverse chronological order beginning with the Aggregate Payments that are to be paid the furthest in time from consummation of the transaction that is subject to Section 280G: (i) cash payments not subject to Section 409A of the Code; (ii) cash payments subject to Section 409A of the Code; (iii) equity-based payments and acceleration; and (iv) non-cash forms of benefits; *provided that* in the case of all the foregoing Aggregate Payments all amounts or payments that are not subject to calculation under Treas. Reg. §1.280G-1, Q&A-24(b) or (c) shall be reduced before any amounts that are subject to calculation under Treas. Reg. §1.280G-1, Q&A-24(b) or (c).

(b) For purposes of this Section 3.3, the "**After-Tax Amount**" means the amount of the Aggregate Payments less all federal, state, and local income, excise and employment taxes imposed on Executive as a result of Executive's receipt of the Aggregate Payments. For purposes of determining the After-Tax Amount, Executive shall be deemed to pay federal income taxes at the highest marginal rate of federal income taxation applicable to individuals for the calendar year in which the determination is to be made, and state and local income taxes at the highest marginal rates of individual taxation in the state and locality applicable to Executive on the Date of Termination, net of the maximum reduction in federal income taxes which could be obtained from deduction of such state and local taxes.

(c) The determination as to whether a reduction in the Aggregate Payments shall be made pursuant to this Section 3.3 shall be made by a nationally recognized accounting firm selected by the Company (the "**Accounting Firm**"), which shall provide detailed supporting calculations both to the Company and Executive within 15 business days of the Date of Termination, if applicable, or at such earlier time as is reasonably requested by the Company or Executive. Any determination by the Accounting Firm shall be binding upon the Company and Executive.

SECTION IV
RESTRICTIVE COVENANTS

IV.1 Confidential Information.

(a) Executive acknowledges that the Company and its Affiliates continually develop Confidential Information (as defined below), that Executive may develop Confidential Information for the Company or its Affiliates and that Executive may learn of Confidential Information during the course of Executive's employment. Executive will comply with the policies and procedures of the Company and its Affiliates for protecting Confidential Information and shall not disclose to any person or use, other than as required by applicable law or for the proper performance of Executive's duties and responsibilities to the Company and its Affiliates, any Confidential Information obtained by Executive incident to Executive's employment or other association with the Company or any of its Affiliates. Executive understands that this restriction shall continue to apply after Executive's employment terminates, regardless of the reason for such termination. The confidentiality obligation under this Section 4.1 shall not apply to information which is generally known or readily available to the public at the time of disclosure or becomes generally known through no wrongful act on the part of Executive or any other person having an obligation of confidentiality to the Company or any of its Affiliates or is required to be disclosed in order to enforce this Agreement.

(b) All documents, records, tapes and other media of every kind and description relating to the business, present or otherwise, of the Company or its Affiliates and any copies, in whole or in part, thereof (the "**Documents**"), whether or not prepared by Executive, shall be the sole and exclusive property of the Company and its Affiliates. Executive shall safeguard all Documents and shall surrender to the Company at the time Executive's employment terminates, or at such earlier time or times as the Board or its designee may specify, all Documents then in Executive's possession or control.

(c) “**Confidential Information**” means any and all information of the Company and its Affiliates that is not generally known by those with whom the Company or any of its Affiliates competes or does business, or with whom the Company or any of its Affiliates plans to compete or do business and any and all information, publicly known in whole or in part or not, which, if disclosed by the Company or any of its Affiliates would assist in competition against them. Confidential Information includes without limitation such information relating to (i) the development, research, testing, manufacturing, marketing and financial activities of the Company and its Affiliates; (ii) the products and services of the Company and its Affiliates; (iii) the costs, sources of supply, financial performance and strategic plans of the Company and its Affiliates; (iv) the identity and special needs of the customers of the Company and its Affiliates; and (v) the people and organizations with whom the Company and its Affiliates have business relationships and the nature and substance of those relationships. Confidential Information also includes any information that the Company or any of its Affiliates has received, or may receive hereafter, belonging to customers or others with any understanding, express or implied, that the information would not be disclosed.

IV.2 Non-Competition and Non-Solicitation.

(a) Executive agrees and acknowledges that the business (the “**Business**”) of the Company is any business activity engaged in, or actively contemplated by the Company (or any Subsidiary) to be engaged in, by the Company (or any Subsidiary) and with which Executive or was involved on or prior to the Date of Termination.

(b) Executive agrees that, except as the Company expressly agrees in writing, during the Restricted Period (defined below), Executive shall not within the Territory (defined below), directly or indirectly, as an owner, partner, affiliate, stockholder, joint venturer, director, employee, consultant, contractor, principal, trustee or licensor, or in any other similar capacity whatsoever of or for any person or entity (other than for the Company):

(i) engage in, own, manage, operate, sell, finance, control, advise or participate in the ownership, management, operation, sales, finance or control of, be employed or employed by, or be connected in any manner with, any business that competes with the Business (each, a “**Competitor**”). Notwithstanding this Section 4.2(b) (i), Executive may accept employment with a Competitor whose business is diversified, provided that (A) such employment is with a portion of the Competitor’s business that does not provide products or services that are the same as, are similar to, or compete with the Company’s products or services (“**Competing Products or Services**”); and (B) prior to Executive’s acceptance of such employment with Competitor, the Company receives separate written assurances satisfactory to the Company from such Competitor and from Executive that Executive will not provide any Competing Products or Services;

(ii) approach, solicit, divert, interfere with, or take away, the business or patronage of any of the actual or prospective members, customers, or clients of the Company, with whom Executive had material Business-related contact and/or about which Executive had access to and/or knowledge of Confidential Information, for a purpose that is competitive with the Business; or

(iii) solicit (whether as an employee, consultant, agent, independent contractor, or otherwise) any person who is, or who at any time during the six (6)-month period prior to the Date of Termination had been, employed or engaged by the Company, or induce or take any action which is intended to induce any such person to terminate his or her employment or relationship, or otherwise cease his or her relationship, with the Company, or interfere in any manner with the contractual or employment relationship between the Company and any employee of or any other person engaged by the Company.

"**Restricted Period**" shall mean the period of time beginning on the Effective Date and ending on the date that is twelve (12) months following the Date of Termination.

"**Territory**" shall mean all of the states of the United States of America and any other country or territory with respect to which Executive has been materially engaged in Business-related activities on behalf of the Company and/or about which Executive has had access to and/or knowledge of Confidential Information.

(c) Notwithstanding anything to the contrary in Section 4.2(b) of this Agreement, Executive is permitted to own, individually, as a passive investor (with no director designation rights, voting rights or veto rights or other special governance or voting rights), up to a one percent (1%) interest in any publicly traded entity that is a Competitor.

IV.3 Executive shall disclose in writing all of Executive's relationships as a director, employee, consultant, contractor, principal, trustee, licensor, agent, or otherwise, with a Competitor or any other business entity, to the Company until the end of the Restricted Period. Executive shall not disparage the Company or any of its officers, directors, or employees; *provided*, however, that this Section 4.3 shall not prohibit or constrain truthful testimony by Executive compelled by any valid legal process or valid legal dispute resolution process. Notwithstanding anything herein to the contrary, nothing in this Section IV shall prevent either party hereto from enforcing such party's rights or remedies hereunder or that such party may otherwise be entitled to enforce or assert under any other agreement or applicable law, or shall limit such rights or remedies in any way.

IV.4 During the Restricted Period, Executive shall notify in writing any prospective new employer or entity otherwise seeking to engage Executive that the provisions of this Section IV exist prior to accepting employment or such other engagement.

IV.5 The terms of this Section IV are reasonable and necessary in light of Executive's position with the Company and responsibility and knowledge of the operations of the Company and its Subsidiaries and are not more restrictive than necessary to protect the legitimate interests of the parties hereto. In addition, any breach of the covenants contained in this Section IV would cause irreparable harm to the Company, its Subsidiaries and Affiliates and there would be no adequate remedy at law or in damages to compensate the Company, its Subsidiaries and Affiliates for any such breach. In the event of a breach or threatened breach by Executive of any of the provisions of this Agreement, Executive hereby consents and agrees that money damages would not afford an adequate remedy and that the Company shall be entitled to seek a temporary or permanent injunction or other equitable relief against such breach or threatened breach from any court of competent jurisdiction, without the necessity of showing any actual damages, and without the necessity of posting any bond or other security, where permissible under applicable law. Any equitable relief shall be in addition to, not in lieu of, legal remedies, monetary damages, or other available relief. Notwithstanding the foregoing, this Agreement is not intended to, and shall be interpreted in a manner that does not, limit or restrict Executive from exercising any legally protected whistleblower rights (including pursuant to Rule 21F under the Exchange Act).

IV.6 Survival of Restrictive Covenants. Upon termination of Executive's employment for any reason whatsoever, the obligations of Executive pursuant to this Section IV shall survive and remain in effect for the periods described herein.

IV.7 No Waiver of Legal Remedies. The restrictions in this Agreement are in addition to and not in lieu of any other obligation of Executive to protect confidential information and trade secrets and any rights and remedies which the Company may have at law or in equity. Nothing in this Agreement is intended to or should be interpreted as diminishing any rights and remedies the Company has. Enforcement of rights and remedies pursuant to this Agreement by the Company and/or any other entity shall not be construed as a waiver of any other rights or remedies at law or equity.

IV.8 Protected Rights. Notwithstanding any other provision of this Agreement, nothing contained in this Agreement limits Executive's ability to file a charge or complaint with the Securities and Exchange Commission or any other federal, state or local government agency or commission (collectively, "**Government Agencies**"), or prevents Executive from providing truthful testimony in response to a lawfully-issued subpoena or court order. Further, this Agreement does not limit Executive's ability to communicate with any Government Agencies or otherwise participate in any investigation or proceeding that may be conducted by any Government Agency, including providing non-privileged documents or other information, without notice to the Company.

IV.9 Defend Trade Secrets Act. Executive is hereby notified that under the Defend Trade Secrets Act: (a) no individual will be held criminally or civilly liable under federal or state trade secret law for disclosure of a trade secret (as defined in the Economic Espionage Act) that is: (i) made in confidence to a federal, state, or local government official, either directly or indirectly, or to an attorney, and made solely for the purpose of reporting or investigating a suspected violation of law; or (ii) made in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal; and (b) an individual who pursues a lawsuit for retaliation by an employer for reporting a suspected violation of the law may disclose the trade secret to the attorney of the individual and use the trade secret information in the court proceeding, if the individual files any document containing the trade secret under seal, and does not disclose the trade secret, except as permitted by court order.

SECTION V
RESOLUTION OF DISPUTES

V.1 Jurisdiction and Venue. Executive and the Company irrevocably submit to the exclusive jurisdiction of (i) the United States District Court for the District of Delaware; and (ii) the courts of the State of Delaware for the purposes of any suit, action or other proceeding arising out of this Agreement. Executive and the Company agree to commence any such action, suit or proceeding either in the United States District Court for the District of Delaware or, if such suit, action or other proceeding may not be brought in such court for jurisdictional reasons, in the courts of the State of Delaware with jurisdiction over New Castle County. Executive and the Company further agree that service of any process, summons, notice or document by U.S. registered mail to the other party's address set forth below shall be effective service of process for any action, suit or proceeding in Delaware with respect to any matters to which Executive has submitted to jurisdiction in this Section 5.1. Executive and the Company irrevocably and unconditionally waive any objection to the laying of venue of any action, suit or proceeding arising out of this Agreement in (A) the United States District Court for the District of Delaware; or (B) the courts of the State of Delaware, and hereby and thereby further irrevocably and unconditionally waive and agree not to plead or claim in any such court that any such action, suit or proceeding brought in any such court has been brought in an inconvenient forum.

V.2 Waiver of Jury Trial. Executive and the Company hereby waive, to the fullest extent permitted by applicable law, any right either of them may have to a trial by jury in respect to any litigation directly or indirectly arising out of, under or in connection with this Agreement.

V.3 Confidentiality. Executive hereby agrees to keep confidential the existence of, and any information concerning, a dispute described in this Section V, except that Executive may disclose information concerning such dispute to the court that is considering such dispute or to Executive's legal counsel (*provided* that such counsel agrees not to disclose any such information other than as necessary to the prosecution or defense of the dispute).

V.4 Payment of Expenses. In the event that Executive institutes any legal action, arbitration or proceeding against the Company to enforce any part of this Agreement and substantially obtains the relief sought, whether by compromise, settlement, judgment or the abandonment by the Company of its claim or defense, the Company shall pay or reimburse Executive for the reasonable attorneys' fees and necessary costs Executive incurs in connection with such action, arbitration or proceeding. Such reimbursement shall be made to Executive following such final compromise, settlement, unappealable judgment or abandonment, and shall be made within ten (10) days following presentation to the Company of appropriate invoices or other documentation of the amount of such fees and expenses.

SECTION VI
SUCCESSORS

VI.1 In addition to any obligations imposed by law upon any successor to the Company, the Company shall require any successor (whether direct or indirect, by purchase, merger, consolidation or otherwise) to all or substantially all of the business or assets of the

Company expressly to assume and agree to perform this Agreement in the same manner and to the same extent that the Company would be required to perform it if no such succession had taken place. The provisions of this Section VI shall continue to apply to each subsequent employer of Executive bound by this Agreement in the event of any merger, consolidation or transfer of all or substantially all of the business or assets of that subsequent employer. This Agreement shall inure to the benefit of the Company, such successors and any assigns. The term "**the Company**" as used herein shall include such successors, and any assigns.

VI.2 This Agreement shall inure to the benefit of and be enforceable by Executive's personal or legal representatives, executors, administrators, successors, heirs, distributees, devisees and legatees.

SECTION VII
NOTICES

VII.1 For the purpose of this Agreement, notices and all other communications provided for in this Agreement shall be in writing (including email, *provided*, that such email states that it is a notice delivered pursuant to this Section 7.1) and shall be given at the address or email address set forth below (or to such other address or email address as either party may have furnished to the other in writing in accordance herewith, except that notice of change of address or email address shall be effective only upon actual receipt). All such notices, requests and other communications shall be deemed received on the date of receipt by the recipient thereof if received prior to 5:00 p.m. on a business day in the place of receipt. Otherwise, any such notice, request or communication shall be deemed to have been received on the next succeeding business day in the place of receipt.

To the Company:

The RealReal, Inc.
55 Francisco Street, Suite 600
San Francisco, CA 94133
Attention: Chief Legal Officer
Email: legal@therealreal.com

To Executive: At Executive's most recent mailing address in the records of the Company, or at Executive's employee email address (during employment).

SECTION VIII
MISCELLANEOUS

VIII.1 Any compensation paid or payable to Executive pursuant to this Agreement which is subject to recovery under any law, government regulation, order or stock exchange listing requirement, or under any policy of the Company adopted from time to time, will be subject to such deductions and clawback (recovery) as may be required to be made pursuant to such law, government regulation, order, stock exchange listing requirement or policy of the

Company. Executive specifically authorizes the Company to withhold from future salary or wages any amounts that may become due under this provision.

VIII.2 This Agreement embodies the entire agreement of the Company and Executive relating to separation or severance pay and, except as specifically provided herein, no provisions of any employee manual, personnel policies, corporate directives or other agreement or document shall be deemed to modify the terms of this Agreement. This Agreement supersedes and replaces the Prior Agreement in its entirety. No amendment or modification of this Agreement shall be valid or binding upon Executive or the Company unless made in writing and signed by the Company and Executive; *provided*, *however*, that the Company may unilaterally terminate the Agreement at the end of the Term by providing at least sixty (60) days' advanced notice of its intent to terminate the Agreement at the end of the Term. This Agreement supersedes all prior understandings and agreements addressing severance or separation pay to which Executive and the Company or an Affiliate are or were parties, including any previous change in control agreement, severance plan, offer letter provisions, or other employment agreements.

VIII.3 No waiver by either party hereto at any time of any breach by the other party hereto of, or compliance with, any condition or provision of this Agreement to be performed by such other party shall be deemed a waiver of similar or dissimilar provisions or conditions at the same or at any prior or subsequent time.

VIII.4 No agreements or representations, oral or otherwise, express or implied, with respect to the subject matter hereof have been made by either party which are not expressly set forth in this Agreement.

VIII.5 This Agreement shall not modify the "at will" nature of Executive's employment, nor shall it confer upon Executive any right to continue employment or service with the Company or its affiliates, nor shall this Agreement interfere in any way with the right of the Company or its affiliates to terminate Executive's employment or service at any time.

VIII.6 The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement, which shall remain in full force and effect. If a judicial determination is made that any provision of this Agreement constitutes an unreasonable or otherwise unenforceable restriction against Executive, such provision shall be rendered void only to the extent that such judicial determination finds the provision to be unreasonable or otherwise unenforceable with respect to Executive. In this regard, Executive hereby agrees that any judicial authority construing this Agreement shall be empowered to reform any portion of this Agreement, including without limitation the scope of the Business, the Territory, and the Restricted Period, in order to make the covenants herein binding and enforceable with respect to Executive, and to apply the provisions of this Agreement and to enforce against Executive the remaining portion of such provisions as the judicial authority determines to be reasonable and enforceable. All of the covenants contained in this Agreement shall be construed as an agreement independent of any other provisions in this Agreement, and the existence of any claim or cause of action Executive may have against the Company and/or its affiliates (other than in connection with a material breach of this Agreement by the Company) shall not constitute a defense to the enforcement by the Company and/or its affiliates of such covenants.

VIII.7 The Agreement shall be construed, administered and governed in all respects under and by the applicable laws of the State of Delaware.

VIII.8 This Agreement may be executed in several counterparts, each of which shall be deemed to be an original but all of which together will constitute one and the same instrument. Delivery of an executed counterpart of a signature page to this Agreement by ".pdf" format or scanned pages shall be effective as delivery of a manually executed counterpart to this Agreement.

[Remainder of page left intentionally blank.]

IN WITNESS WHEREOF, the parties have signed this Agreement to be effective as of the Effective Date.

The RealReal, Inc.

By: /s/ Karen Katz
Name: Karen Katz
Title: Chairperson

Executive

/s/ Rati Sahi Levesque

Exhibit 10.3

SEPARATION AGREEMENT

THIS SEPARATION AGREEMENT (this "**Agreement**"), dated as of October 28, 2024 (the "**Separation Date**"), is made by and between The RealReal, Inc., a corporation organized under the laws of the State of Delaware (together with its successors and assigns, the "**Company**"), and John E. Koryl ("**Executive**").

WHEREAS, Executive is currently serving as the Chief Executive Officer of the Company and member of the Board of Directors of the Company (the "**Board**");

WHEREAS, Executive's positions as member of the Board and Chief Executive Officer of the Company will terminate on the terms and conditions set forth herein, effective as of the Separation Date;

WHEREAS, in furtherance of the foregoing, the Executive and the Company have reached an agreement with respect to all rights, duties and obligations arising between them, including, but not limited to, any rights, duties and obligations that have arisen or might arise out of or are in any way related to the Executive's employment with the Company and the conclusion thereof.

NOW, THEREFORE, in consideration of the foregoing recitals, the mutual promises contained herein, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto hereby agree as follows:

SECTION I

DEFINITIONS

For the purposes of this Agreement the following definitions shall apply:

I.1 "**Accrued Obligations**" means (a) any unpaid base salary through the Separation Date, payable within 30 days following the Separation Date, or on such earlier date as may be required by applicable law; (b) reimbursement for any unreimbursed business expenses incurred through the Separation Date, payable in accordance with the Company's policy; and (c) all vested benefits under the Company's retirement, health and welfare and equity-based employee benefit plans to which Executive is entitled, payable in accordance with the terms of such plan or program.

I.2 "**Affiliate**" means any entity controlled by, controlling, or under common control with, the Company.

I.3 "**Board**" means the Board of Directors of the Company.

I.4 "**Cause**" has the meaning set forth in the Severance Agreement.

I.5 "**COBRA**" means the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended from time to time.

I.6 "**Code**" means the Internal Revenue Code of 1986, as amended from time to time, and the regulations issued thereunder.

I.7 "**Severance Agreement**" means the Severance and Change in Control Agreement between the Company and Executive, dated on or around March 16, 2023.

I.8 "**Section 409A**" means Section 409A of the Code and any regulations or other formal guidance promulgated thereunder.

SECTION II

SEPARATION BENEFITS

II.1 Resignation of Directorships. Effective as of the Separation Date, the Executive's employment as Chief Executive Officer is terminated by the Company without Cause and the Executive hereby resigns from his position as a member of the Board and from any other position that he may hold as an officer or director of any Affiliate. Such resignations are effectuated by virtue of the Executive signing this Agreement with the intention that no further documentation shall be required, however, the Executive shall, at the Company's request, execute and deliver to the Company any additional documentation that may be required, under local law or otherwise, to effectuate such resignations.

II.2 Bonus; Equity Awards. In accordance with the terms of the Company's annual executive bonus program, Executive acknowledges that he will not be entitled to receive any annual bonus in respect of the Company's 2024 fiscal year as he will not be employed with the Company through the applicable payment date. All outstanding, unvested equity awards granted to Executive under any equity plan of the Company or its Affiliates are forfeited in accordance with the terms of the equity plan and the applicable award agreements.

II.3 Separation Benefits. Subject to and conditioned upon (A) the Executive's continued compliance with the terms and conditions of this Agreement (including, without limitation, the Covenants (as defined in Section V below)), and (B) the Executive's execution, concurrently with the execution of this Agreement, and non-revocation of the Release in accordance with Section III below, in addition to the Accrued Obligations, the Company will pay or provide the Executive with the following payments and benefits in accordance with the terms of the Severance Agreement (collectively, the "**Separation Benefits**"):

(a) Severance. Executive will be paid an amount equal to $750,000, which represents twelve (12) months of Executive's annual salary in effect immediately prior to the Separation Date. Such cash severance payment shall be made in a lump sum within sixty (60) days following the Separation Date.

(b) COBRA Equivalent. Whether or not Executive elects coverage under COBRA under any group health plan of the Company or an Affiliate, the Company will pay Executive a taxable lump sum equal to the portion of the monthly cost of Executive's group health plan coverage, as in effect on the Separation Date, that is subsidized by the Company for similarly situated active employees as of the Separation Date multiplied by twelve (12). The

COBRA equivalent payment shall be made in a lump sum within sixty (60) days following the Separation Date.

II.4 Termination of Severance Agreement. The Severance Agreement shall terminate with effect from the Separation Date and Executive shall have no further rights or interests thereunder; *provided*, *however*, that notwithstanding the foregoing, Section IV ("**Restrictive Covenants**") of the Severance Agreement shall survive such termination and remain in full force and effect (and, for clarity, the Date of Termination (as defined in the Severance Agreement) referenced in Section IV ("**Restrictive Covenants**") of the Severance Agreement means and refers to the Separation Date).

II.5 Return of Company Property. No later than thirty (30) days following the Separation Date, Executive shall return to the Company all of the following: (i) all keys, files, records (and copies thereof), equipment (including, but not limited to, computer hardware, software and printers, wireless handheld devices, cellular phones and pagers), access or credit cards or devices, Company identification, and any other Company-owned property in Executive's possession or control, and (ii) all documents, materials and copies thereof, comprising or relating to any Confidential Information (as defined in the Severance Agreement), including all hard copies of the foregoing in Executive's possession (and Executive shall permanently delete any electronic copies), and Executive shall not make or retain any copy or extract of any of the foregoing.

II.6 No Additional Entitlements. Executive acknowledges and agrees that, except as expressly provided herein, Executive has no further rights or entitlements in connection with Executive's employment with the Company and its Affiliates and/or the termination of such employment.

SECTION III

GENERAL RELEASE

III.1 General Release. In consideration of, and as a condition to, the Company's entry into this Agreement and Executive's receipt of compensation and benefits as contemplated by Section II above and for other good and valuable considerations, Executive is choosing to execute and deliver to the Company the release of claims attached to this Agreement as Exhibit A (the "**Release**").

III.2 Executive understands and agrees that Executive's agreement with the terms and conditions of this Agreement and the Release is signified by Executive's signature hereto and thereto and is voluntary, deliberate and informed. Executive acknowledges that this Agreement provides consideration of value to Executive beyond what Executive is owed and that Executive was free to consult an attorney before signing this Agreement. Executive agrees to strictly comply with all the terms and conditions of this Agreement. Furthermore, Executive acknowledges that Executive has read and understands this Agreement and that Executive signs this Agreement and the Release voluntarily, with full appreciation that at no time in the future may Executive pursue any of the rights Executive has waived in this Agreement.

SECTION IV

TAX INFORMATION

IV.1 Tax Withholding. The Company shall deduct from payments to be paid to Executive or any beneficiary all federal, state and local withholding and other taxes and charges required to be deducted under applicable law.

IV.2 Section 409A. The intent of the parties is that payments and benefits under this Agreement shall comply with or be exempt from Section 409A, and this Agreement shall be interpreted in accordance with such intentions. Notwithstanding the foregoing, neither the Company or its Affiliates nor their respective directors, officers, employees or advisers shall be held liable for any taxes, interest, penalties or other monetary amounts owed by Executive (or any other individual claiming a benefit through Executive) as a result of this Agreement.

SECTION V

RESTRICTIVE COVENANTS

In consideration of the compensation and benefits described herein and the Company's commitments hereunder, the Company and Executive agree as follows:

V.1 Cooperation in Legal Proceedings. Executive agrees that, after the Separation Date, upon the request of the Company, Executive shall reasonably cooperate with and assist the Company in undertaking and preparing for legal, regulatory and/or other proceedings, in any case, relating to any affairs of the Company and/or its Affiliates and subsidiaries with respect to which Executive was involved during or gained knowledge of during his employment with the Company.

V.2 Non-Disparagement. During Executive's employment with the Company and thereafter, Executive shall not make any statement, publicly or privately, that would or would be reasonably expected to disparage the Company or its Affiliates or subsidiaries, or any of their respective officers, directors, employees, or agents. The Company agrees that it shall instruct its senior executive officers and directors as of the Separation Date not to make any statement, publicly or privately, that would or would be reasonably expected to disparage Executive. Nothing in this Agreement or otherwise prevents either party from making any truthful statement (a) to the extent required or protected by law or legal process or (b) to a governmental agency or any judicial, arbitral or self-regulatory forum. Nothing herein prevents Executive from discussing or disclosing information about unlawful acts in the workplace, such as harassment or discrimination or any other conduct that Executive has reason to believe is unlawful.

V.3 Reaffirmation of Restrictive Covenants. The Company and Executive acknowledge and agree that the Restrictive Covenants currently remain and shall remain in full force and effect in accordance with their terms, shall survive the termination of Executive's employment with the Company and are reasonable and necessary for the protection of the Company's trade secrets, confidential business information and other legitimate business interests and Executive has received adequate consideration for these covenants, including as set forth in this Agreement.

V.4 Remedies; Injunctive Relief. Executive acknowledges and understands that the Restrictive Covenants and the covenants and restrictions included in this Section V (collectively, the "**Covenants**") are of a special and unique nature, the breach of which cannot be adequately compensated for in damages by an action at law, and that any breach or threatened breach of the Covenants would cause the Company and its Affiliates irreparable harm. Accordingly, in the event of a breach or threatened breach by Executive of the Covenants, the Company and its Affiliates shall be entitled to an injunction restraining him from such breach without the need to post bond therefor. Nothing contained in this Section V shall be construed as prohibiting the Company or its Affiliates from pursuing, or limiting the Company's or its Affiliates' ability to pursue, any other remedies available for any breach or threatened breach of this Agreement by Executive. The provisions of Section 6.1 below relating to arbitration of disputes shall not be applicable to the Company to the extent it seeks a temporary or permanent injunction in any court to restrain Executive from violating the Covenants.

V.5 Exceptions. Notwithstanding the foregoing or anything herein or in the Severance Agreement to the contrary, nothing contained herein, in the Release or in the Severance Agreement shall prohibit Executive from (a) filing a charge with, reporting possible violations of federal law or regulation to, participating in any investigation by, or cooperating with any governmental agency or entity or making other disclosures that are protected under the whistleblower provisions of applicable law or regulation and/or (b) communicating directly with, cooperating with, or providing information (including trade secrets) in confidence to, any federal, state or local government regulator (including, but not limited to, the U.S. Securities and Exchange Commission, the U.S. Commodity Futures Trading Commission, or the U.S. Department of Justice) for the purpose of reporting or investigating a suspected violation of law, or from providing such information to Executive's attorney or in a sealed complaint or other document filed in a lawsuit or other governmental proceeding. Pursuant to 18 U.S.C. Section 1833(b), (i) Executive will not be held criminally or civilly liable under any federal or state trade secret law for the disclosure of a trade secret that is made: (A) in confidence to a federal, state or local government official, either directly or indirectly, or to an attorney, and solely for the purpose of reporting or investigating a suspected violation of law; or (B) in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal; and (ii) if Executive pursues a lawsuit for retaliation by the Company or any of its Affiliates for reporting a suspected violation of law, Executive may disclose trade secret to Executive's attorney and use trade secret information in the court proceeding, if Executive (x) files any document containing trade secrets under seal, and (y) does not disclose trade secrets, except as permitted by court order.

SECTION VI

RESOLUTION OF DISPUTES

VI.1 Arbitration.

(a) Any and all disputes between Executive and the Company (including its directors, officers, employees and agents), however significant, arising out of, relating in any way to or in connection with this Agreement and/or Executive's employment with or termination of employment from the Company (including the validity, scope and enforceability of this arbitration clause but excluding, at the election of either party, any dispute arising under Section V hereof) shall be solely settled by final and binding arbitration as described in the Business Protection and Arbitration Agreement between Executive and the Company dated January 24, 2023.

VI.2 Waiver of Jury Trial. Executive and the Company hereby waive, to the fullest extent permitted by applicable law, any right either of them may have to a trial by jury in respect to any litigation directly or indirectly arising out of, under or in connection with this Agreement.

VI.3 Confidentiality. Executive hereby agrees to keep confidential the existence of, and any information concerning, a dispute described in this Section VI, except that Executive may disclose information concerning such dispute to the court that is considering such dispute or to Executive's legal counsel (*provided* that such counsel agrees not to disclose any such information other than as necessary to the prosecution or defense of the dispute).

SECTION VII

SUCCESSORS

VII.1 In addition to any obligations imposed by law upon any successor to the Company, the Company shall require any successor (whether direct or indirect, by purchase, merger, consolidation or otherwise) to all or substantially all of the business or assets of the Company expressly to assume and agree to perform this Agreement in the same manner and to the same extent that the Company would be required to perform it if no such succession had taken place. The provisions of this Section VII shall continue to apply to each subsequent employer of Executive bound by this Agreement in the event of any merger, consolidation or transfer of all or substantially all of the business or assets of that subsequent employer. This Agreement shall inure to the benefit of the Company, such successors and any assigns. The term "the Company" as used herein shall include such successors, and any assigns.

VII.2 This Agreement shall inure to the benefit of and be enforceable by Executive's personal or legal representatives, executors, administrators, successors, heirs, distributees, devisees and legatees.

SECTION VIII

NOTICES

VIII.1 For the purpose of this Agreement, notices and all other communications provided for in this Agreement shall be in writing (including email, *provided*, that such email states that it is a notice delivered pursuant to this Section 8.1) and shall be given at the address or email address set forth below (or to such other address or email address as either party may have furnished to the other in writing in accordance herewith, except that notice of change of address or email address shall be effective only upon actual receipt). All such notices, requests and other communications shall be deemed received on the date of receipt by the recipient thereof if received prior to 5:00 p.m. on a business day in the place of receipt. Otherwise, any such notice, request or communication shall be deemed to have been received on the next succeeding business day in the place of receipt.

To the Company:

The RealReal, Inc.
55 Francisco Street, Suite 400
San Francisco, CA 94133
Attention: Chief Legal Officer
Email: todd.suko@therealreal.com

To Executive: At Executive's most recent mailing address in the records of the Company, or at Executive's personal email address (to be provided to the Company).

SECTION IX

MISCELLANEOUS

IX.1 In the event that Executive breaches any of Executive's obligations under this Agreement or as otherwise imposed by law, the Company will be entitled to recover all severance and other consideration paid or provided under this Agreement and to obtain all other relief provided by law or equity. Any compensation paid or payable to Executive pursuant to this Agreement which is subject to recovery under any law, government regulation, order or stock exchange listing requirement, or under any policy of the Company in place or as adopted from time to time, will be subject to such deductions and clawback (recovery) as may be required to be made pursuant to such law, government regulation, order, stock exchange listing requirement or policy of the Company. Executive specifically authorizes the Company to withhold from future salary or wages any amounts that may become due under this provision if allowed pursuant to applicable law.

IX.2 Nothing contained in this Agreement shall constitute or be treated as an admission by the Company of any liability, wrongdoing, or violation of law.

IX.3 This Agreement embodies the entire agreement of the Company and Executive relating to separation or severance pay and, except as specifically provided herein, no provisions of any employee manual, personnel policies, corporate directives or other agreement or document shall be deemed to modify the terms of this Agreement. No amendment or modification of this Agreement shall be valid or binding upon Executive or the Company unless made in writing and signed by the Company and Executive. This Agreement supersedes all prior understandings and agreements addressing severance or separation pay to which Executive and the Company or an Affiliate are or were parties, including any previous change in control agreement, severance plan, offer letter provisions, or other employment agreements.

IX.4 No waiver by either party hereto at any time of any breach by the other party hereto of, or compliance with, any condition or provision of this Agreement to be performed by such other party shall be deemed a waiver of similar or dissimilar provisions or conditions at the same or at any prior or subsequent time.

IX.5 No agreements or representations, oral or otherwise, express or implied, with respect to the subject matter hereof have been made by either party which are not expressly set forth in this Agreement.

IX.6 The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement, which shall remain in full force and effect. If a judicial determination is made that any provision of this Agreement constitutes an unreasonable or otherwise unenforceable restriction against Executive, such provision shall be rendered void only to the extent that such judicial determination finds the provision to be unreasonable or otherwise unenforceable with respect to Executive. In this regard, Executive hereby agrees that any judicial authority construing this Agreement shall be empowered to reform any portion of this Agreement and to apply the provisions of this Agreement and to enforce against Executive the remaining portion of such provisions as the judicial authority determines to be reasonable and enforceable pursuant to applicable law. All of the covenants contained in this Agreement shall be construed as an agreement independent of any other provisions in this Agreement, and the existence of any claim or cause of action Executive may have against the Company and/or its Affiliates (other than in connection with a material breach of this Agreement by the Company) shall not constitute a defense to the enforcement by the Company and/or its Affiliates of such covenants.

IX.7 This Agreement shall be construed, administered and governed in all respects under and by the applicable laws of the State of Delaware.

IX.8 This Agreement may be executed in several counterparts, each of which shall be deemed to be an original but all of which together will constitute one and the same instrument. Delivery of an executed counterpart of a signature page to this Agreement by ".pdf' format or scanned pages shall be effective as delivery of a manually executed counterpart to this Agreement.

[Remainder of page left intentionally blank.]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Separation Date.

EXECUTIVE

/s/ John E. Koryl
By: John E. Koryl

COMPANY

/s/ Todd A. Suko
By: Todd A. Suko
Its: Chief Legal Officer and Secretary

[Signature Page to Separation Agreement]

<u>EXHIBIT A</u>

GENERAL RELEASE AND WAIVER OF CLAIMS

THIS GENERAL RELEASE OF CLAIMS (this "**Release**") is made and entered into pursuant to the Separation Agreement entered into by and between by and between The RealReal, Inc., a Delaware corporation (the "**Company**"), and John E. Koryl ("**Executive**"), dated October 28, 2024 (the "**Separation Agreement**"). Any term not otherwise defined herein shall have the meaning ascribed in the Separation Agreement.

1. <u>Release</u>. In consideration for the compensation and benefits described in, and subject to, Section 2.3 of the Separation Agreement, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Executive does hereby release and forever discharge the "<u>Releasees</u>" hereunder, consisting of the Company and its subsidiaries, affiliates, successors, agents, directors, officers, employees, representatives, lawyers, insurers, and all persons acting by, through, under or in concert with them, or any of them, of and from any and all manner of action or actions, cause or causes of action, in law or in equity, suits, debts, liens, contracts, agreements, promises, liability, claims, demands, damages, losses, costs, attorneys' fees or expenses, of any nature whatsoever, known or unknown, fixed or contingent (hereinafter called "**Claims**"), which Executive now has or may hereafter have against the Releasees, or any of them, by reason of any matter, cause, or thing whatsoever from the beginning of time to the date hereof. The Claims released herein include, without limiting the generality of the foregoing, any Claims in any way arising out of, based upon, or related to the employment or termination of employment of Executive by the Releasees, or any of them; any alleged breach of any express or implied contract of employment; any alleged torts or other alleged legal restrictions on Releasees' right to terminate the employment of Executive; and any alleged violation of any federal, state or local statute or ordinance including, without limitation, Title VII of the Civil Rights Act of 1964, the Civil Rights Act of 1866, the Civil Rights Act of 1871, the Age Discrimination In Employment Act ("**ADEA**"), the Americans With Disabilities Act, COBRA, the False Claims Act, the Family and Medical Leave Act of 1993, the Fair Credit Reporting Act, the Employee Retirement Income Security Act, the Equal Pay Act of 1963, the Genetic Information Non-Discrimination Act, the Immigration Reform and Control Act of 1986, the Occupational Safety and Health Act, the Lily Ledbetter Fair Pay Act, the Rehabilitation Act of 1973, the Worker Retraining and Notification Act, the Fair Labor Standards Act, the Sarbanes-Oxley Act, Employment Relations and Collective Bargaining Act, the Texas Labor Code (specifically including the Texas Payday Law, the Texas Anti-Retaliation Act, Chapter 21 of the Texas Labor Code) and other statutes and the common law of the state of Texas or any municipality or locality within the state of Texas, California Fair Employment and Housing Act, California Labor Code, California Constitution, California Family Rights Act, California Consumer Privacy Act, each as amended and/or to the fullest extent permitted under applicable law.

(a) Waiver of California Civil Code Section 1542: This Release is intended to be effective as a general release of and bar to all claims as stated in this Section. Accordingly, the Executive specifically waives all rights under California Civil Code Section 1542, which states, “A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.” The Executive acknowledges that the Executive may later discover claims or facts in addition to or different from those which the Executive now knows or believes to exist with regards to the subject matter of this Release, and which, if known or suspected at the time of executing this Release, may have materially affected its terms. Nevertheless, the Executive waives any and all Claims that might arise as a result of such different or additional claims or facts.

2. Unreleased Claims. Notwithstanding Section 1 above, this Release shall not operate to release any rights or claims of Executive (a) to payment of the compensation and benefits payable under Section 2.3 of the Separation Agreement, which compensation and benefits (among other good and valuable consideration) are provided in exchange for this Release, (b) to any Claims for indemnification arising under any applicable indemnification obligation of the Company, (c) to any Claims which cannot be waived by an employee under applicable law, (d) to any Claims Executive may have solely in Executive’s capacity as a equityholder of the Company, (e) to accrued or vested benefits under any applicable Company employee benefit plan (within the meaning of Section 3(3) of the Employment Retirement Income Security Act), (f) to Executive’s right to file a charge with the Equal Employment Opportunity Commission (or similar state agency) or participate in any investigation conducted by the Equal Employment Opportunity Commission (or similar state agency), *provided* that Executive does not seek or accept any individual recovery arising from such charge, or (g) to any Claims arising after the date of this Release. Nothing in this Release prevents or precludes Executive from challenging or seeking a determination in good faith of the validity of this waiver under the ADEA, nor does it impose any condition precedent, penalties, or costs for doing so, unless specifically authorized by federal law.

Notwithstanding anything herein to the contrary, this Release does not include any claim under applicable workers’ compensation or unemployment compensation statutes or any other claim, rights, or benefits which, as a matter of law, cannot be released by private agreement. This Release does not limit or restrict Executive’s right under the ADEA to challenge the validity of this Agreement. This Agreement is not intended to affect the rights and responsibilities of government agencies such as the Equal Employment Opportunity Commission, National Labor Relations Board, Securities and Exchange Commission, or similar state or local agency, to enforce the laws within their jurisdiction. This Agreement does not limit or restrict Executive’s specific non-waivable rights to file a charge or participate in investigations or proceedings conducted by certain government agencies (including the Equal Employment Opportunity Commission and National Labor Relations Board), although Employee agrees to waive any right to monetary relief, damages, or other benefits or remedies of any sort whatsoever arising therefrom, with the exception of any right to receive an award for information provided to the Securities and Exchange Commission.

3. Knowing and Voluntary ADEA; OWBPA Disclosure and Waiver; Consideration Period. In accordance with the Older Workers Benefit Protection Act of 1990, Executive is hereby advised as follows:

(a) Executive is hereby advised that Executive has the right to and should consult with an attorney before signing this Release;

(b) Executive was provided at least twenty-one (21) days to consider this Release before signing it. If Executive signs this Release prior to the expiration of the twenty-one (21) day period, Executive waives the remainder of that period. Executive waives the restarting of the twenty-one (21) day period in the event of any modification of the Release, whether or not material; and

(c) Executive has seven (7) days after signing this Release to revoke this Release, and this Release will become effective upon the expiration of that revocation period.

If Executive wishes to revoke this Release, Executive must deliver written notice (which may be by email), stating Executive's intent to revoke to Todd Suko, the Company's Chief Legal Officer, at todd.suko@therealreal.com, on or before 11:59 p.m. (PT) on the seventh (7th) day after the date on which Executive signs this Release. This Release will become effective at 12:01 a.m. (PT) on the eighth (8th) day after the date on which Executive signs this Release. Executive acknowledges that if Executive revokes this Release, Executive will not receive the compensation and benefits in Section 2.3 of the Separation Agreement.

4. No Assignment or Transfer. Executive represents and warrants that there has been no assignment or other transfer of any interest in any Claim released hereunder which Executive may have against Releasees, or any of them, and Executive agrees to indemnify and hold Releasees, and each of them, harmless from any liability, Claims, demands, damages, costs, expenses and attorneys' fees incurred by Releasees, or any of them, as the result of any such assignment or transfer or any rights or Claims under any such assignment or transfer. It is the intention of the parties that this indemnity does not require payment as a condition precedent to recovery by the Releasees against Executive under this indemnity.

5. Attorneys' Fees. Executive agrees that if Executive hereafter commences any suit arising out of, based upon, or relating to any of the Claims released hereunder or in any manner asserts against Releasees, or any of them, any of the Claims released hereunder, then Executive agrees to pay to Releasees, and each of them, in addition to any other damages caused to Releasees thereby, all attorneys' fees incurred by Releasees in defending or otherwise responding to said suit or Claim. Notwithstanding the foregoing, the foregoing sentence shall not apply to the extent such attorneys' fees are attributable Executive's good faith challenge to or a request for declaratory relief with respect to the validity of the waiver herein under the ADEA.

6. No Admission of Liability. Executive further understands and agrees that neither the payment of any sum of money nor the execution of this Release shall constitute or be construed as an admission of any liability whatsoever by the Releasees, or any of them, who have consistently taken the position that they have no liability whatsoever to Executive.

7. Covenants. Executive acknowledges and agrees that Executive is bound by the Covenants (as defined in the Separation Agreement). Executive hereby reaffirms the covenants, terms and conditions set forth in the Covenants, and acknowledges and agrees that the Covenants remain in full force and effect in accordance with their respective terms.

8. Additional Acknowledgements. Executive understands and agrees that Executive's agreement to the terms and conditions of this Release, as signified by Executive's signature hereto, is voluntary, deliberate and informed. Executive acknowledges that this Release provides consideration of value to Executive, beyond consideration that Executive was already entitled to receive, and that Executive was free to consult an attorney before signing this Release. Executive acknowledges and agrees that all wages due have been paid to Executive. Executive agrees to strictly comply with all the terms and conditions of this Release and the Separation Agreement, including (without limitation) the Covenants. Further, Executive acknowledge that Executive has read and understands this Release and that Executive signs this Release voluntarily and after sufficient opportunity to consult with an attorney of his choosing, with full appreciation that at no time in the future may Executive pursue any of the rights Executive has waived in this Release.

9. Breach. In the event that Executive breaches any of Executive's obligations under this Release or as otherwise imposed by law, the Company will be entitled to recover all severance and other consideration paid or provided under this Release and to obtain all other relief provided by law or equity. Any compensation paid or payable to Executive pursuant to the Separation Agreement and this Release which is subject to recovery under any law, government regulation, order or stock exchange listing requirement, or under any policy of the Company adopted from time to time, will be subject to such deductions and clawback (recovery) as may be required to be made pursuant to such law, government regulation, order, stock exchange listing requirement or policy of the Company. Executive specifically authorizes the Company to withhold from future salary or wages any amounts that may become due under this provision if allowed pursuant to applicable law.

10. No Other Amounts/Benefits Owed. Executive acknowledges and agrees that Executive has been paid for all of Executive's services with the Company and that Executive has not earned any wages, salary, incentive compensation, bonuses, commissions or similar payments or benefits or any other compensation or amounts that have not already been paid to Executive except as provided for in the Separation Agreement. Executive further agrees that, prior to the execution of this Release, Executive was not entitled to receive any further payments or benefits from the Company, and the only payments and benefits that Executive is entitled to receive from the Company in the future are those specified in the Separation Agreement and this Release.

11. Entire Agreement. This Release, together with the Separation Agreement, represents the final and entire agreement between Executive and the Company with respect to the subject matter hereof and replaces and supersedes all other agreements, negotiations and discussions between the parties hereto and/or their respective counsel with respect to the subject

matter hereof. Any amendment to this Release must be in writing, signed by duly authorized representatives of the parties, and stating the intent of the parties to amend this Release.

12. Severability. The invalidity or unenforceability of any provision of this Release shall not affect the validity or enforceability of any other provision of this Release, which shall remain in full force and effect. If a judicial determination is made that any provision of this Release constitutes an unreasonable or otherwise unenforceable restriction against Executive, such provision shall be rendered void only to the extent that such judicial determination finds the provision to be unreasonable or otherwise unenforceable with respect to Executive. In this regard, Executive hereby agrees that any judicial authority construing this Release shall be empowered to reform any portion of this Release, and to apply the provisions of this Release and to enforce against Executive the remaining portion of such provisions as the judicial authority determines to be reasonable and enforceable.

13. Counterparts. This Release may be executed in any number of counterparts, each of which shall be deemed an original as against any party whose signature appears thereon, and all of which together shall constitute one and the same instrument. This Release shall become binding when one or more counterparts hereof, individually or taken together, shall bear the signatures of all of the parties reflected hereon as the signatories. Photographic copies of such signed counterparts may be used in lieu of the originals for any purpose.

14. Governing Law. This Release shall be governed by and construed in accordance with the laws of the State of Delaware, without regard to conflicts of laws principles thereof.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties have executed this Release as of date(s) set forth below.

EXECUTIVE

/s/ John E. Koryl
By: John E. Koryl

Date: October 28, 2024

COMPANY

/s/ Todd Suko
By: Todd Suko
Its: Chief Legal Officer and Secretary

Date: October 28, 2024

FORM OF SEVERANCE AND CHANGE-IN-CONTROL AGREEMENT

THIS SEVERANCE AND CHANGE-IN-CONTROL AGREEMENT (this "**Agreement**"), dated as of [__] (the "**Effective Date**"), is made by and between The RealReal, Inc., a corporation organized under the laws of the State of Delaware (the "**Company**") and [__] ("**Executive**"). This Agreement supersedes and replaces any prior severance and change-in-control agreement that Executive may have entered into with the Company.

WHEREAS, the Board of Directors of the Company (the "**Board**") has determined that it is in the best interests of the Company and its stockholders to assure that the Company will have the continued dedication and objectivity of Executive, notwithstanding the possibility, threat or occurrence of a termination of employment or the occurrence of a Change in Control (as defined below) of the Company;

WHEREAS, the Board believes that it is in the best interests of the Company and its stockholders to provide Executive with an incentive to continue Executive's employment and to motivate Executive to maximize the value of the Company for the benefit of its stockholders; and

WHEREAS, the Board further believes that it is imperative to provide Executive with certain severance benefits upon termination of Executive's employment, and with certain additional benefits upon a termination of employment in connection with a Change in Control of the Company, to provide Executive with enhanced financial security and incentive to remain with the Company.

NOW, THEREFORE, in consideration of the promises, agreements and conditions contained in this Agreement, the Company and Executive agree as follows:

SECTION I
DEFINITIONS

For the purposes of this Agreement the following definitions shall apply:

I.1 "**Accrued Obligations**" means (a) any unpaid base salary through the Date of Termination, payable within 30 days following the Date of Termination, or on such earlier date as may be required by applicable law; (b) any Annual Bonus for a prior year earned but unpaid, payable at the time such bonuses would have been paid if Executive was still employed with the Company; (c) reimbursement for any unreimbursed business expenses incurred through the Date of Termination, payable in accordance with the Company's policy; and (d) all vested benefits under the Company's retirement, health and welfare and equity-based employee benefit plans to which Executive is entitled, payable in accordance with the terms of such plan or program.

I.2 "**Affiliate**" means any entity controlled by, controlling, or under common control with, the Company.

I.3 "**Annual Bonus**" means Executive's annual bonus under the Company's or an Affiliate's annual executive bonus program, as in effect from time to time, under which Executive is covered.

I.4 "**Annual Salary**" means Executive's annual base salary, exclusive of any bonus pay, commissions or other additional compensation, in effect on the Date of Termination.

I.5 "**Cause**" means the occurrence of any one or more of the following events:

(a) Executive's act, or failure to act, that was performed in bad faith and to the material detriment of the Company or any of its Affiliates;

(b) Executive's material violation of any law or regulation applicable to the business of the Company or any of its Affiliates;

(c) Executive's material violation of a material Company policy;

(d) Executive's material breach of any confidentiality agreement or invention assignment agreement between Executive and the Company (or any Affiliate of the Company); or

(e) Executive's admission or conviction of, or entering a plea of guilty or nolo contendere to, a felony or Executive's commission of any act of moral turpitude.

I.6 "**Change in Control**" means the occurrence, in a single transaction or in a series of related transactions during the Term, of any one or more of the following events:

(a) An acquisition (other than directly from the Company) of any voting securities of the Company (the "**Voting Securities**") by any "Person" (having the meaning ascribed to such term in Section 3(a)(9) of the Exchange Act, and as used in Sections 13(d) and 14(d) thereof, including a "group" as defined in Section 13(d)) immediately after which such Person has beneficial ownership (within the meaning of Rule 13d-3 promulgated under the Exchange Act) ("**Beneficial Ownership**" and/or "**Beneficially Owned**") of 50% or more of the combined voting power of the Company's then outstanding Voting Securities; *provided,* that in determining whether a Change in Control has occurred, Voting Securities which are acquired in a Non-Control Acquisition shall not constitute an acquisition which would cause a Change in Control. For purposes of this Agreement, the term "**Non-Control Acquisition**" shall mean an acquisition by (i) the Company or any Subsidiary; (ii) an employee benefit plan (or a trust forming a part thereof) maintained by the Company or any Subsidiary; or (iii) any Person in connection with a Non-Control Transaction (as hereinafter defined);

(b) The individuals who, as of the Effective Date, are members of the Board (the "**Incumbent Board**") cease for any reason to constitute at least a majority of the Board; *provided,* that if the election, or nomination for election by the Company's stockholders, of any new director was approved by a vote of at least a majority of the Incumbent Board, such new director shall, for purposes of this clause (b), be considered a member of the Incumbent Board; and *provided, further,* that no individual shall be considered a member of the Incumbent Board if such individual initially assumed office as a result of either an actual or threatened election contest (as described in former Rule 14a-11 promulgated under the Exchange Act) ("**Election Contest**") or other actual or threatened solicitation of proxies or consents by or on behalf of a Person other than the Board (a "**Proxy Contest**"), including by reason of any agreement intended to avoid or settle any Election Contest or Proxy Contest;

(c) Consummation of a merger, consolidation or reorganization involving the Company, unless such transaction is a Non-Control Transaction. For purposes of this Agreement, the term "**Non-Control Transaction**" shall mean a merger, consolidation or reorganization of the Company in which: (i) the stockholders of the Company, immediately before such merger, consolidation or reorganization, own, directly or indirectly immediately following such merger, consolidation or reorganization, at least 50% of the combined voting power of the voting securities of the corporation or entity resulting from such merger, consolidation or reorganization (the "**Surviving Company**") over which any Person has Beneficial Ownership in substantially the same proportion as their Beneficial Ownership of the Voting Securities immediately before such merger, consolidation or reorganization; (ii) the individuals who were members of the Incumbent Board immediately prior to the execution of the agreement providing for such merger, consolidation or reorganization constitute at least a majority of the members of the board of directors or equivalent body of the Surviving Company; and (iii) no Person (other than the Company, any Subsidiary, any employee benefit plan (or any trust forming a part thereof) maintained by the Company, the Surviving Company or any Person who, immediately prior to such merger, consolidation or reorganization, had Beneficial Ownership of 50% or more of the then outstanding Voting Securities) has Beneficial Ownership of 50% or more of the combined voting power of the Surviving Company's then outstanding voting securities; or

(d) The sale or other disposition of all or substantially all of the assets of the Company to any Person (other than a transfer to a Subsidiary).

Notwithstanding the foregoing, a Change in Control shall not be deemed to occur solely because any Person (the "**Subject Person**") acquired Beneficial Ownership of more than the permitted amount of the outstanding Voting Securities as a result of the acquisition of Voting Securities by the Company which, by reducing the number of Voting Securities outstanding, increases the proportional number of shares Beneficially Owned by the Subject Person; *provided,* that if a Change in Control would occur (but for the operation of this sentence) as a result of the acquisition of Voting Securities by the Company, and after such share acquisition by the Company, the Subject Person becomes the Beneficial Owner of any additional Voting Securities which increases the percentage of the then outstanding Voting Securities Beneficially Owned by the Subject Person, then a Change in Control shall occur. Furthermore, to the extent necessary to ensure compliance with Section 409A, a Change in Control will only be deemed to occur for purposes of this Agreement to the extent it is also a change in control event as defined in Treasury Regulation Section 1.409A- 3(i)(5)(i).

I.7 "**Change in Control Protection Period**" means the period commencing three (3) months prior to a Change in Control that occurs during the Term and ending twelve (12) months after a Change in Control that occurs during the Term.

I.8 "**COBRA**" means the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended from time to time.

I.9 "**Code**" means the Internal Revenue Code of 1986, as amended from time to time, and the regulations issued thereunder.

I.10 "**Date of Termination**" means the effective date of Executive's termination of employment and service with the Company and its Affiliates.

I.11 "**Exchange Act**" means the Securities Exchange Act of 1934, as amended from time to time, and the regulations issued thereunder.

I.12 "**Good Reason**" means any of the following:

(a) A requirement by the Company or an Affiliate of the Company that Executive relocate or commute to a location more than 50 miles away from Executive's work location as of the Effective Date, unless Executive has consented in writing to such requirement;

(b) A material reduction by the Company in Executive's base salary (other than a reduction in connection with substantially proportionate reductions to the base salary of substantially all other executives of the Company), unless Executive has consented in writing to such reduction; or

(c) A material diminution in Executive's authority, duties or responsibilities inconsistent with Executive's authority, duties or responsibilities immediately prior to such material diminution (including any material diminution in Executive's authority, duties or responsibilities occurring as a result of a corporate transaction, measured in the context of the combined organization resulting from such transaction), unless Executive has consented in writing to such diminution.

Good Reason shall not exist unless Executive gives the Company notice of the event giving rise to Good Reason within sixty (60) days of the date Executive has knowledge of such event. Such notice shall specifically delineate such claimed breach and shall inform the Company that it is required to cure such breach within ninety (90) days (the "**Cure Period**") after such notice is given. If such breach is not so cured, Executive may resign for Good Reason within three (3) months following the end of the Cure Period. If such breach is cured within the Cure Period or if such breach is not cured but Executive does not resign for Good Reason within three (3) months following the end of the Cure Period, Good Reason shall not exist hereunder.

I.13 "**Section 409A**" means Section 409A of the Code and any regulations or other formal guidance promulgated thereunder.

I.14 "**Section 280G**" means Section 280G of the Code and any regulations or other formal guidance promulgated thereunder.

I.15 "**Subsidiary**" means any corporation, limited liability company, partnership, joint venture, or similar entity in which the Company owns, directly or indirectly, an equity interest possessing more than 50% of the combined voting power of the total outstanding equity interests of such entity.

I.16 "**Target Bonus**" means Executive's target Annual Bonus under the Company's or Affiliate's annual bonus program, as in effect from time to time, under which Executive is covered.

I.17 "**Term**" means the thirty-six (36)-month period beginning on the Effective Date and ending on the thirty-six (36)-month anniversary of the Effective Date (the "**Initial Term**"); *provided*, *however*, that the Term will be automatically extended for successive twelve (12)-month periods at the end of the Initial Term and any successive twelve (12)month period unless the Company provides at least sixty (60) days' notice in advance of the end of the Initial Term or any subsequent twelve (12)-month period of its decision to terminate the Agreement at the end of the Term.

SECTION II
SEVERANCE PAYMENTS AND BENEFITS

II.1 Change in Control Protection Period. If, during a Change in Control Protection Period, the Company terminates Executive's employment without Cause or Executive terminates his employment for Good Reason, then the Company shall pay or provide the following amounts and benefits to Executive, in addition to the Accrued Obligations:

(a) Severance Payment. Executive will be paid an amount equal to twelve (12) months Executive's Annual Salary *plus* Executive's Target Bonus in effect immediately prior to the Date of Termination, in a lump sum within sixty (60) days following the Date of Termination.

(b) Bonus for Year of Termination. Executive will be paid a pro-rata portion of the Target Bonus in effect on the Date of Termination, determined by multiplying the amount of the Target Bonus by a fraction, the numerator of which is the number of days from January 1 of the year during which the Date of Termination occurs to the Date of Termination and the denominator of which is three hundred and sixty-five (365). The pro-rated bonus shall be paid in a lump sum within sixty (60) days following the Date of Termination.

(c) COBRA Equivalent. Whether or not Executive elects coverage under COBRA under any group health plan of the Company or an Affiliate, the Company will pay Executive a taxable lump sum equal to the portion of the monthly cost of Executive's group health plan coverage, as in effect on the Date of Termination, that is subsidized by the Company for similarly situated active employees as of the Date of Termination multiplied by twelve (12). The COBRA equivalent payment shall be made in a lump sum within sixty (60) days following the Date of Termination.

(d) Equity Awards. Notwithstanding anything to the contrary in any equity plan of the Company or its Affiliates or Executive's award agreement thereunder, any and all outstanding equity awards granted to Executive under any equity plan of the Company or its Affiliates will be treated as follows: (i) all time-based vesting conditions applicable to such awards will be treated as satisfied in full and shall lapse on the Date of Termination; and (ii) any performance-based vesting conditions applicable to such awards shall be deemed to have been satisfied at target through the Date of Termination. Such awards will be settled in accordance with, and otherwise be subject to, the terms of the equity plan of the Company or its Affiliates and Executive's award agreement thereunder; *provided*, *however*, that any vested restricted stock units that are not subject to Section 409A shall be settled upon Executive within sixty (60) days following the Date of Termination.

II.2 Outside of Change in Control Protection Period. If the Company terminates Executive's employment without Cause, or Executive terminates employment for Good Reason, in either case other than during a Change in Control Protection Period, then the Company shall pay or provide the following amounts and benefits to Executive, in addition to the Accrued Obligations:

(a) Severance. Executive will be paid an amount equal to twelve (12) months Executive's Annual Salary *plus* Executive's Target Bonus in effect immediately prior to the Date of Termination in a lump sum within sixty (60) days following the Date of Termination.

(b) Bonus for Year of Termination. Executive will be paid a pro-rata portion of the Target Bonus in effect on the Date of Termination, determined by multiplying the amount of the Target Bonus by a fraction, the numerator of which is the number of days from January 1 of the year during which the Date of Termination occurs to the Date of Termination and the denominator of which is three hundred and sixty-five (365). The pro-rated bonus shall be paid in a lump sum within sixty (60) days following the Date of Termination.

(c) COBRA Equivalent. Whether or not Executive elects coverage under COBRA under any group health plan of the Company or an Affiliate, the Company will pay Executive a taxable lump sum equal to the portion of the monthly cost of Executive's group health plan coverage, as in effect on the Date of Termination, that is subsidized by the Company for similarly situated active employees as of the Date of Termination multiplied by twelve (12). The COBRA equivalent payment shall be made in a lump sum within sixty (60) days following the Date of Termination.

(d) Equity Awards. All outstanding equity awards granted to Executive under any equity plan of the Company or its Affiliates shall vest, be forfeited or settled in accordance with the terms of the equity plan of the Company or its Affiliates and the applicable award agreements.

II.3 Termination for Any Other Reason. If Executive's employment and service with the Company and its Affiliates is terminated for any reason other than by the Company without Cause or by Executive for Good Reason, including due to Executive's retirement, death or disability, no amounts or benefits will be payable or provided under this Agreement, except the Accrued Amounts.

II.4 Release. Notwithstanding anything contained in this Agreement to the contrary, the Company shall not be obligated to provide any payments or benefits to Executive under Section 2.1 or Section 2.2 hereof other than the Accrued Obligations unless Executive executes and delivers to the Company a general release of claims in favor of the Company and its Affiliates and their respective employees, officers and directors in such form as is reasonably requested by the Company, and such release becomes irrevocable by its terms, no later than sixty (60) days after the Date of Termination.

II.5 No Duplication. In no event shall payments and benefits provided in accordance with this Agreement be made in respect of more than one of Section 2.1 or 2.2.

II.6 Offset. Notwithstanding the provisions of this Section II, the Company's obligation to make the severance payments and benefits described herein shall be reduced by any amounts owed by Executive to the Company and its Affiliates; *provided*, *however*, that offsets of amounts owed by Executive that are nonqualified deferred compensation (within the meaning of Section 409A) shall only be made in accordance with Section 409A.

SECTION III
TAX INFORMATION

III.1 Tax Withholding. The Company shall deduct from payments to be paid to Executive or any beneficiary all federal, state and local withholding and other taxes and charges required to be deducted under applicable law.

III.2 Section 409A.

(a) The intent of the parties is that payments and benefits under this Agreement shall comply with or be exempt from Section 409A, and this Agreement shall be interpreted in accordance with such intentions. Notwithstanding the foregoing, neither the Company or its Affiliates nor their respective directors, officers, employees or advisers shall be held liable for any taxes, interest, penalties or other monetary amounts owed by Executive (or any other individual claiming a benefit through Executive) as a result of this Agreement.

(b) A termination of employment shall not be deemed to have occurred for purposes of any provision of this Agreement providing for the payment of any amounts or benefits subject to Section 409A upon or following a termination of employment unless such termination is also a “separation from service,” within the meaning of Section 409A, from the Company, and references to the “Date of Termination,” a “termination,” “termination of employment” or like terms shall mean “separation from service,” within the meaning of Section 409A, from the Company.

(c) Whenever a payment under this Agreement specifies a payment period with reference to a number of days, the actual date of payment within the specified period shall be within the sole discretion of the Company. In the event the payment period under this Agreement commences in one calendar year and ends in a second calendar year, the payment shall not be paid until the second calendar year. For purposes of Section 409A, Executive’s right to receive installment payments pursuant to this Agreement shall be treated as a right to receive a series of separate and distinct payments.

(d) If Executive is deemed on the Date of Termination to be a “specified employee” within the meaning of that term under Section 409A(a)(2)(B) of the Code, then with regard to any payment or benefit subject to Section 409A that is payable on account of a “separation from service,” such payment or benefit shall be made or provided at the date which is the earlier of (i) the expiration of the six (6)-month period measured from the date of such “separation from service” of Executive; and (ii) the date of Executive’s death (the “**Delay Period**”). Upon the expiration of the Delay Period, all payments and benefits delayed pursuant to this section (whether they would have otherwise been payable in a single sum or in installments in the absence of such delay) shall be paid to Executive in a lump sum without interest, and any remaining payments and benefits due under this Agreement shall be paid or provided in accordance with the normal payment dates specified for them herein.

III.3 Section 280G.

(a) Anything in this Agreement to the contrary notwithstanding, in the event that the amount of any compensation, payment or distribution by the Company to or for the benefit of Executive, whether paid or payable or distributed or distributable pursuant to the terms of this Agreement or otherwise, calculated in a manner consistent with Section 280G (the "**Aggregate Payments**"), would be subject to the excise tax imposed by Section 4999 of the Code, then the Aggregate Payments shall be reduced (but not below zero) so that the sum of all of the Aggregate Payments shall be $1.00 less than the amount at which Executive becomes subject to the excise tax imposed by Section 4999 of the Code; *provided* that such reduction shall only occur if it would result in Executive receiving a higher After-Tax Amount (as defined below) than Executive would receive if the Aggregate Payments were not subject to such reduction. In such event, the Aggregate Payments shall be reduced in the following order, in each case, in reverse chronological order beginning with the Aggregate Payments that are to be paid the furthest in time from consummation of the transaction that is subject to Section 280G: (i) cash payments not subject to Section 409A of the Code; (ii) cash payments subject to Section 409A of the Code; (iii) equity-based payments and acceleration; and (iv) non-cash forms of benefits; *provided* that in the case of all the foregoing Aggregate Payments all amounts or payments that are not subject to calculation under Treas. Reg. §1.280G-1, Q&A-24(b) or (c) shall be reduced before any amounts that are subject to calculation under Treas. Reg. §1.280G-1, Q&A-24(b) or (c).

(b) For purposes of this Section 3.3, the "**After-Tax Amount**" means the amount of the Aggregate Payments less all federal, state, and local income, excise and employment taxes imposed on Executive as a result of Executive's receipt of the Aggregate Payments. For purposes of determining the After-Tax Amount, Executive shall be deemed to pay federal income taxes at the highest marginal rate of federal income taxation applicable to individuals for the calendar year in which the determination is to be made, and state and local income taxes at the highest marginal rates of individual taxation in the state and locality applicable to Executive on the Date of Termination, net of the maximum reduction in federal income taxes which could be obtained from deduction of such state and local taxes.

(c) The determination as to whether a reduction in the Aggregate Payments shall be made pursuant to this Section 3.3 shall be made by a nationally recognized accounting firm selected by the Company (the "**Accounting Firm**"), which shall provide detailed supporting calculations both to the Company and Executive within 15 business days of the Date of Termination, if applicable, or at such earlier time as is reasonably requested by the Company or Executive. Any determination by the Accounting Firm shall be binding upon the Company and Executive.

SECTION IV
RESTRICTIVE COVENANTS

IV.1 Confidential Information.

(a) Executive acknowledges that the Company and its Affiliates continually develop Confidential Information (as defined below), that Executive may develop Confidential Information for the Company or its Affiliates and that Executive may learn of Confidential Information during the course of Executive's employment. Executive will comply with the policies and procedures of the Company and its Affiliates for protecting Confidential Information and shall not disclose to any person or use, other than as required by applicable law or for the proper performance of Executive's duties and responsibilities to the Company and its Affiliates, any Confidential Information obtained by Executive incident to Executive's employment or other association with the Company or any of its Affiliates. Executive understands that this restriction shall continue to apply after Executive's employment terminates, regardless of the reason for such termination. The confidentiality obligation under this Section 4.1 shall not apply to information which is generally known or readily available to the public at the time of disclosure or becomes generally known through no wrongful act on the part of Executive or any other person having an obligation of confidentiality to the Company or any of its Affiliates or is required to be disclosed in order to enforce this Agreement.

(b) All documents, records, tapes and other media of every kind and description relating to the business, present or otherwise, of the Company or its Affiliates and any copies, in whole or in part, thereof (the "**Documents**"), whether or not prepared by Executive, shall be the sole and exclusive property of the Company and its Affiliates. Executive shall safeguard all Documents and shall surrender to the Company at the time Executive's employment terminates, or at such earlier time or times as the Board or its designee may specify, all Documents then in Executive's possession or control.

(c) "**Confidential Information**" means any and all information of the Company and its Affiliates that is not generally known by those with whom the Company or any of its Affiliates competes or does business, or with whom the Company or any of its Affiliates plans to compete or do business and any and all information, publicly known in whole or in part or not, which, if disclosed by the Company or any of its Affiliates would assist in competition against them. Confidential Information includes without limitation such information relating to (i) the development, research, testing, manufacturing, marketing and financial activities of the Company and its Affiliates; (ii) the products and services of the Company and its Affiliates; (iii) the costs, sources of supply, financial performance and strategic plans of the Company and its Affiliates; (iv) the identity and special needs of the customers of the Company and its Affiliates; and (v) the people and organizations with whom the Company and its Affiliates have business relationships and the nature and substance of those relationships. Confidential Information also includes any information that the Company or any of its Affiliates has received, or may receive hereafter, belonging to customers or others with any understanding, express or implied, that the information would not be disclosed.

IV.2 [Non-Competition and Non-Solicitation.

(a) Executive agrees and acknowledges that the business (the "**Business**") of the Company is any business activity engaged in, or actively contemplated by the Company (or any

Subsidiary) to be engaged in, by the Company (or any Subsidiary) and with which Executive or was involved on or prior to the Date of Termination.

(b) Executive agrees that, except as the Company expressly agrees in writing, during the Restricted Period (defined below), Executive shall not within the Territory (defined below), directly or indirectly, as an owner, partner, affiliate, stockholder, joint venturer, director, employee, consultant, contractor, principal, trustee or licensor, or in any other similar capacity whatsoever of or for any person or entity (other than for the Company):

(i) engage in, own, manage, operate, sell, finance, control, advise or participate in the ownership, management, operation, sales, finance or control of, be employed or employed by, or be connected in any manner with, any business that competes with the Business (each, a "**Competitor**"). Notwithstanding this Section 4.2(b)(i), Executive may accept employment with a Competitor whose business is diversified, *provided* that (A) such employment is with a portion of the Competitor's business that does not provide products or services that are the same as, are similar to, or compete with the Company's products or services ("**Competing Products or Services**"); and (B) prior to Executive's acceptance of such employment with Competitor, the Company receives separate written assurances satisfactory to the Company from such Competitor and from Executive that Executive will not provide any Competing Products or Services;

(ii) approach, solicit, divert, interfere with, or take away, the business or patronage of any of the actual or prospective members, customers, or clients of the Company, with whom Executive had material Business-related contact and/or about which Executive had access to and/or knowledge of Confidential Information, for a purpose that is competitive with the Business; or

(iii) solicit (whether as an employee, consultant, agent, independent contractor, or otherwise) any person who is, or who at any time during the six (6)-month period prior to the Date of Termination had been, employed or engaged by the Company, or induce or take any action which is intended to induce any such person to terminate his or her employment or relationship, or otherwise cease his or her relationship, with the Company, or interfere in any manner with the contractual or employment relationship between the Company and any employee of or any other person engaged by the Company.

"**Restricted Period**" shall mean the period of time beginning on the Effective Date and ending on the date that is twelve (12) months following the Date of Termination.

"**Territory**" shall mean all of the states of the United States of America and any other country or territory with respect to which Executive has been materially engaged in Business-related activities on behalf of the Company and/or about which Executive has had access to and/or knowledge of Confidential Information.

(c) Notwithstanding anything to the contrary in Section 4.2(b) of this Agreement, Executive is permitted to own, individually, as a passive investor (with no director designation rights, voting rights or veto rights or other special governance or voting rights), up to a one percent (1%) interest in any publicly traded entity that is a Competitor.][1] [RESERVED]

[1] For non-California employees.

IV.3 Executive shall disclose in writing all of Executive's relationships as a director, employee, consultant, contractor, principal, trustee, licensor, agent, or otherwise, with a Competitor or any other business entity, to the Company until the end of the Restricted Period. Executive shall not disparage the Company or any of its officers, directors, or employees; *provided*, *however*, that this Section 4.3 shall not prohibit or constrain truthful testimony by Executive compelled by any valid legal process or valid legal dispute resolution process. Notwithstanding anything herein to the contrary, nothing in this Section IV shall prevent either party hereto from enforcing such party's rights or remedies hereunder or that such party may otherwise be entitled to enforce or assert under any other agreement or applicable law, or shall limit such rights or remedies in any way.

IV.4 During the Restricted Period, Executive shall notify in writing any prospective new employer or entity otherwise seeking to engage Executive that the provisions of this Section IV exist prior to accepting employment or such other engagement.

IV.5 The terms of this Section IV are reasonable and necessary in light of Executive's position with the Company and responsibility and knowledge of the operations of the Company and its Subsidiaries and are not more restrictive than necessary to protect the legitimate interests of the parties hereto. In addition, any breach of the covenants contained in this Section IV would cause irreparable harm to the Company, its Subsidiaries and Affiliates and there would be no adequate remedy at law or in damages to compensate the Company, its Subsidiaries and Affiliates for any such breach. In the event of a breach or threatened breach by Executive of any of the provisions of this Agreement, Executive hereby consents and agrees that money damages would not afford an adequate remedy and that the Company shall be entitled to seek a temporary or permanent injunction or other equitable relief against such breach or threatened breach from any court of competent jurisdiction, without the necessity of showing any actual damages, and without the necessity of posting any bond or other security, where permissible under applicable law. Any equitable relief shall be in addition to, not in lieu of, legal remedies, monetary damages, or other available relief. Notwithstanding the foregoing, this Agreement is not intended to, and shall be interpreted in a manner that does not, limit or restrict Executive from exercising any legally protected whistleblower rights (including pursuant to Rule 21F under the Exchange Act).

IV.6 Survival of Restrictive Covenants. Upon termination of Executive's employment for any reason whatsoever, the obligations of Executive pursuant to this Section IV shall survive and remain in effect for the periods described herein.

IV.7 No Waiver of Legal Remedies. The restrictions in this Agreement are in addition to and not in lieu of any other obligation of Executive to protect confidential information and trade secrets and any rights and remedies which the Company may have at law or in equity. Nothing in this Agreement is intended to or should be interpreted as diminishing any rights and remedies the Company has. Enforcement of rights and remedies pursuant to this Agreement by the Company and/or any other entity shall not be construed as a waiver of any other rights or remedies at law or equity.

IV.8 Protected Rights. Notwithstanding any other provision of this Agreement, nothing contained in this Agreement limits Executive's ability to file a charge or complaint with the Securities and Exchange Commission or any other federal, state or local government agency or commission (collectively, “**Government Agencies**”), or prevents Executive from providing truthful testimony in response to a lawfully-issued subpoena or court order. Further, this Agreement does not limit Executive’s ability to communicate with any Government Agencies or otherwise participate in any investigation or proceeding that may be conducted by any Government Agency, including providing non-privileged documents or other information, without notice to the Company.

IV.9 Defend Trade Secrets Act. Executive is hereby notified that under the Defend Trade Secrets Act: (a) no individual will be held criminally or civilly liable under federal or state trade secret law for disclosure of a trade secret (as defined in the Economic Espionage Act) that is: (i) made in confidence to a federal, state, or local government official, either directly or indirectly, or to an attorney, and made solely for the purpose of reporting or investigating a suspected violation of law; or (ii) made in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal; and (b) an individual who pursues a lawsuit for retaliation by an employer for reporting a suspected violation of the law may disclose the trade secret to the attorney of the individual and use the trade secret information in the court proceeding, if the individual files any document containing the trade secret under seal, and does not disclose the trade secret, except as permitted by court order.

SECTION V
RESOLUTION OF DISPUTES

V.1 Jurisdiction and Venue. Executive and the Company irrevocably submit to the exclusive jurisdiction of (i) the United States District Court for the District of Delaware; and (ii) the courts of the State of Delaware for the purposes of any suit, action or other proceeding arising out of this Agreement. Executive and the Company agree to commence any such action, suit or proceeding either in the United States District Court for the District of Delaware or, if such suit, action or other proceeding may not be brought in such court for jurisdictional reasons, in the courts of the State of Delaware with jurisdiction over New Castle County. Executive and the Company further agree that service of any process, summons, notice or document by U.S. registered mail to the other party’s address set forth below shall be effective service of process for any action, suit or proceeding in Delaware with respect to any matters to which Executive has submitted to jurisdiction in this Section 5.1. Executive and the Company irrevocably and unconditionally waive any objection to the laying of venue of any action, suit or proceeding arising out of this Agreement in (A) the United States District Court for the District of Delaware; or (B) the courts of the State of Delaware, and hereby and thereby further irrevocably and unconditionally waive and agree not to plead or claim in any such court that any such action, suit or proceeding brought in any such court has been brought in an inconvenient forum.

V.2 Waiver of Jury Trial. Executive and the Company hereby waive, to the fullest extent permitted by applicable law, any right either of them may have to a trial by jury in respect to any litigation directly or indirectly arising out of, under or in connection with this Agreement.

V.3 Confidentiality. Executive hereby agrees to keep confidential the existence of, and any information concerning, a dispute described in this Section V, except that Executive may disclose information concerning such dispute to the court that is considering such dispute or to Executive’s legal counsel (*provided* that such counsel agrees not to disclose any such information other than as necessary to the prosecution or defense of the dispute).

V.4 Payment of Expenses. In the event that Executive institutes any legal action, arbitration or proceeding against the Company to enforce any part of this Agreement and substantially obtains the relief sought, whether by compromise, settlement, judgment or the abandonment by the Company of its claim or defense, the Company shall pay or reimburse Executive for the reasonable attorneys' fees and necessary costs Executive incurs in connection with such action, arbitration or proceeding. Such reimbursement shall be made to Executive following such final compromise, settlement, unappealable judgment or abandonment, and shall be made within ten (10) days following presentation to the Company of appropriate invoices or other documentation of the amount of such fees and expenses.

SECTION VI
SUCCESSORS

VI.1 In addition to any obligations imposed by law upon any successor to the Company, the Company shall require any successor (whether direct or indirect, by purchase, merger, consolidation or otherwise) to all or substantially all of the business or assets of the Company expressly to assume and agree to perform this Agreement in the same manner and to the same extent that the Company would be required to perform it if no such succession had taken place. The provisions of this Section VI shall continue to apply to each subsequent employer of Executive bound by this Agreement in the event of any merger, consolidation or transfer of all or substantially all of the business or assets of that subsequent employer. This Agreement shall inure to the benefit of the Company, such successors and any assigns. The term "**the Company**" as used herein shall include such successors, and any assigns.

VI.2 This Agreement shall inure to the benefit of and be enforceable by Executive's personal or legal representatives, executors, administrators, successors, heirs, distributees, devisees and legatees.

SECTION VII
NOTICES

VII.1 For the purpose of this Agreement, notices and all other communications provided for in this Agreement shall be in writing (including email, *provided*, that such email states that it is a notice delivered pursuant to this Section 7.1) and shall be given at the address or email address set forth below (or to such other address or email address as either party may have furnished to the other in writing in accordance herewith, except that notice of change of address or email address shall be effective only upon actual receipt). All such notices, requests and other communications shall be deemed received on the date of receipt by the recipient thereof if received prior to 5:00 p.m. on a business day in the place of receipt. Otherwise, any such notice, request or communication shall be deemed to have been received on the next succeeding business day in the place of receipt.

To the Company:

The RealReal, Inc.
55 Francisco Street, Suite 150
San Francisco, CA 94133
Attention: Chief Legal Officer

Email: [__]

To Executive: At Executive's most recent mailing address in the records of the Company, or at Executive's employee email address (during employment).

SECTION VIII
MISCELLANEOUS

VIII.1 Any compensation paid or payable to Executive pursuant to this Agreement which is subject to recovery under any law, government regulation, order or stock exchange listing requirement, or under any policy of the Company adopted from time to time, will be subject to such deductions and clawback (recovery) as may be required to be made pursuant to such law, government regulation, order, stock exchange listing requirement or policy of the Company. Executive specifically authorizes the Company to withhold from future salary or wages any amounts that may become due under this provision.

VIII.2 This Agreement embodies the entire agreement of the Company and Executive relating to separation or severance pay and, except as specifically provided herein, no provisions of any employee manual, personnel policies, corporate directives or other agreement or document shall be deemed to modify the terms of this Agreement. No amendment or modification of this Agreement shall be valid or binding upon Executive or the Company unless made in writing and signed by the Company and Executive; *provided*, *however*, that the Company may unilaterally terminate the Agreement at the end of the Term by providing at least sixty (60) days' advanced notice of its intent to terminate the Agreement at the end of the Term. This Agreement supersedes all prior understandings and agreements addressing severance or separation pay to which Executive and the Company or an Affiliate are or were parties, including any previous change in control agreement, severance plan, offer letter provisions, or other employment agreements.

VIII.3 No waiver by either party hereto at any time of any breach by the other party hereto of, or compliance with, any condition or provision of this Agreement to be performed by such other party shall be deemed a waiver of similar or dissimilar provisions or conditions at the same or at any prior or subsequent time.

VIII.4 No agreements or representations, oral or otherwise, express or implied, with respect to the subject matter hereof have been made by either party which are not expressly set forth in this Agreement.

VIII.5 This Agreement shall not modify the "at will" nature of Executive's employment, nor shall it confer upon Executive any right to continue employment or service with the Company or its affiliates, nor shall this Agreement interfere in any way with the right of the Company or its affiliates to terminate Executive's employment or service at any time.

VIII.6 The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement, which shall remain in full force and effect. If a judicial determination is made that any provision of this Agreement constitutes an unreasonable or otherwise unenforceable restriction against Executive, such provision shall be rendered void only to the extent that such judicial determination finds the provision to be unreasonable or otherwise unenforceable with respect to Executive. In this regard, Executive hereby agrees that any judicial authority construing this Agreement shall be empowered to reform any portion of this Agreement, including without limitation the scope of the Business, the Territory, and the Restricted Period, in order to make the covenants herein binding and enforceable with respect to Executive, and to apply the provisions of this Agreement and to enforce against Executive the remaining portion of such provisions as the judicial authority determines to be reasonable and enforceable. All of the covenants contained in this Agreement shall be construed as an agreement independent of any other provisions in this Agreement, and the existence of any claim or cause of action Executive may have against the Company and/or its affiliates (other than in connection with a material breach of this Agreement by the Company) shall not constitute a defense to the enforcement by the Company and/or its affiliates of such covenants.

VIII.7 The Agreement shall be construed, administered and governed in all respects under and by the applicable laws of the State of Delaware.

VIII.8 This Agreement may be executed in several counterparts, each of which shall be deemed to be an original but all of which together will constitute one and the same instrument. Delivery of an executed counterpart of a signature page to this Agreement by ".pdf" format or scanned pages shall be effective as delivery of a manually executed counterpart to this Agreement.

[Remainder of page left intentionally blank.]

IN WITNESS WHEREOF, the parties have signed this Agreement to be effective as of the Effective Date.

The RealReal, Inc.

By: ______________________________

Name:

Title:

Executive

____

Exhibit 31.1

CERTIFICATION PURSUANT TO
RULES 13a-14(a) AND 15d-14(a) UNDER THE SECURITIES EXCHANGE ACT OF 1934,
AS ADOPTED PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002

I, Rati Sahi Levesque, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of The RealReal, Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

   (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

   (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

   (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

   (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

   (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

   (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: November 4, 2024

By: /s/ Rati Sahi Levesque

Rati Sahi Levesque
Chief Executive Officer

Exhibit 31.2

CERTIFICATION PURSUANT TO
RULES 13a-14(a) AND 15d-14(a) UNDER THE SECURITIES EXCHANGE ACT OF 1934,
AS ADOPTED PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002

I, Ajay Madan Gopal, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of The RealReal, Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

   (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

   (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

   (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

   (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

   (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

   (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: November 4, 2024

By: /s/ Ajay Madan Gopal

Ajay Madan Gopal
Chief Financial Officer

Exhibit 32.1

CERTIFICATION PURSUANT TO
18 U.S.C. SECTION 1350, AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the Quarterly Report of The RealReal, Inc. (the "Company") on Form 10-Q for the period ending September 30, 2024 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I certify, pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, that, to my knowledge:

(1) The Report fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934; and

(2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: November 4, 2024

By: /s/ Rati Sahi Levesque

Rati Sahi Levesque
Chief Executive Officer

Exhibit 32.2

**CERTIFICATION PURSUANT TO
18 U.S.C. SECTION 1350, AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Quarterly Report of The RealReal, Inc. (the "Company") on Form 10-Q for the period ending September 30, 2024 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I certify, pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, that, to my knowledge:

(1) The Report fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934; and

(2) The information contained in the Report fairly presents, in all material respects, the financial condition and result of operations of the Company.

Date: November 4, 2024	By:	/s/ Ajay Madan Gopal
		Ajay Madan Gopal
		Chief Financial Officer