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**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

**CLASS ACTION COMPLAINT**

**GABY BASMADJIAN,  
INDIVIDUALLY AND  
OTHERS SIMILARLY  
SITUATED**

**PLAINTIFFS,**

**V.**

**THE REALREAL, INC.,**

**DEFENDANT.**

1. Violation of California UCL (Cal. Bus. & Prof. Code § 17200) – Unfair Prong
2. Violation of California UCL (Cal. Bus. & Prof. Code § 17200) – Fraudulent Prong
3. Violation of California UCL (Cal. Bus. & Prof. Code § 17200) – Unlawful Prong
4. Violation of California False Advertising Law (Cal. Bus. & Prof. Code § 17500)
5. Violation of the California CLRA (Cal. Civ. Code § 1750)
6. Common Law Fraud
7. Negligent Misrepresentation
8. Breach of Express Warranty

**JURY TRIAL DEMANDED**

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2 NOW COMES Plaintiff, by and through their  
3 attorneys, and allege the following against The RealReal, Inc. (“RealReal” or  
4 “Defendant”):

4 **NATURE OF ACTION**

- 5 1. This is a class action against The RealReal, Inc., (“RealReal”), for overstating  
6 gemstone weights on jewelry sold on their online luxury consignment website  
7 TheRealReal.com. During the class period, RealReal systematically inflated the total  
8 weights of small uncertificated gemstones knowing that the average consumer would  
9 have no way to know that the weights were inflated.
- 10 2. RealReal’s luxury consignment website, TheRealReal.com, allows individuals to  
11 sell and purchase luxury items available on consignment to and from millions of  
12 users across the globe, in addition to eight Luxury Consignment Offices, including  
13 locations in Chicago, Dallas, Los Angeles, Miami, New York, San Francisco, and  
14 Washington D.C.
- 15 3. RealReal’s consignment process allows individuals to have luxury items they wish  
16 to sell shipped, dropped off, or picked up by RealReal. After RealReal receives the  
17 item, RealReal’s team of “experts” authenticate, price, and sell the items the  
18 consigner wishes to sell.<sup>1</sup>

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<sup>1</sup> <https://www.therealreal.com/consign>

- 1 4. Through RealReal’s authentication process, which they advertise behind their “team  
2 of authentication experts, horologists, and gemologists,” RealReal guarantees that  
3 every item sold on their website and in stores is “100% the real thing.”<sup>2</sup>
- 4 5. According to the Federal Trade Commission, diamond weights are to be accurate to  
5 the last decimal place:

6 **16 C.F.R. §23.17 Misrepresentation of weight and “total weight.”**

- 7 a. It is unfair or deceptive to misrepresent the weight of a diamond.  
8 b. It is unfair or deceptive to use the word “point” or any abbreviation in  
9 any representation, advertising, marking, or labeling to describe the  
10 weight of a diamond, unless the weight is also stated as decimal parts  
11 of a carat (e.g., 25 points or .25 carat).

12 NOTE 1 TO PARAGRAPH (b): A carat is a standard unit of weight for a  
13 diamond and is equivalent to 200 milligrams ( $\frac{1}{5}$  gram). A point is one  
14 one-hundredth ( $\frac{1}{100}$ ) of a carat.

- 15 c. If diamond weight is stated as decimal parts of a carat (e.g., .47 carat),  
16 the stated figure should be accurate to the last decimal place. If  
17 diamond weight is stated to only one decimal place (e.g., .5 carat), the  
18 stated figure should be accurate to the second decimal place (e.g., “.5  
19 carat” could represent a diamond weight between .495-.504).
- 20 d. If diamond weight is stated as fractional parts of a carat, a conspicuous  
21 disclosure of the fact that the diamond weight is not exact should be  
made in close proximity to the fractional representation and a  
disclosure of a reasonable range of weight for each fraction (or the  
weight tolerance being used) should also be made.

NOTE TO PARAGRAPH (d): When fractional representations of diamond  
weight are made, as described in paragraph d of this section, in catalogs or  
other printed materials, the disclosure of the fact that the actual diamond  
weight is within a specified range should be made conspicuously on every  
page where a fractional representation is made. Such disclosure may refer

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<sup>2</sup> <https://www.therealreal.com/about>

1 to a chart or other detailed explanation of the actual ranges used. For  
2 example, “Diamond weights are not exact; see chart on p X for ranges.”

3 6. RealReal’s products vary by far more than that allowed under 16 C.F.R. §23.17.

4 Consumers are not advised that gemstone weights are approximate nor are they  
5 advised of a range of weights for the gemstones.

6 7. RealReal’s products are sold throughout the United States both inside California and  
7 outside California.

8 **PARTIES**

9 8. Plaintiff Gaby Basmadjian is an adult who is a citizen and resident of Novi,  
10 Michigan, who in reliance on Defendant’s false and deceptive labeling, purchased a  
11 ring from TheRealReal.com on August 30, 2017 for \$982.62 based in part on the  
12 representation that the ring contained 2.10 carats of diamonds.

13 9. Defendant The RealReal, Inc. (“RealReal”) is a Delaware corporation with principal  
14 place of business located at 55 San Francisco St., 6<sup>th</sup> Floor, San Francisco, California  
15 94133. RealReal may be served through its agent Dana Dufrane at 55 San Francisco  
16 St., 6<sup>th</sup> Floor, San Francisco, California 94133.

17 10. When in this Complaint reference is made to any act of Defendant, such shall be  
18 deemed to mean that officers, directors, agents, employees, or representatives of the  
19 Defendant named in this lawsuit committed or authorized such acts, or failed and  
20 omitted to adequately supervise or properly control or direct their employees while  
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1 engaged in the management, direction, operation or control of the affairs of the  
2 Defendant and did so while acting within the scope of their employment.

3 **VENUE AND JURISDICTION**

4 11. Venue is proper because Defendant RealReal has its principal place of business in  
5 California and the subject jewelry was purchased from Defendant' website which is  
6 operated from San Francisco County. San Francisco County is in the geographic  
7 purview of the United States District Court for the Northern District of California.

8 12. The U.S. District Court has original jurisdiction of this matter under 28 U.S.C.  
9 §1332(d)(2) because (a) the amount in controversy exceeds \$5,000,000 and (b) the  
10 proposed class members, as defined below, are citizens of all states, including states  
11 other than California. As such, at least one member of the class is a citizen of a state  
12 different than the Defendant.

13 **FACTUAL ALLEGATIONS RELATED TO ALL COUNTS**

14 13. On August 30, 2017, Plaintiff purchased a ring from Defendant on their website,  
15 TheRealReal.com<sup>3</sup>. Below is a picture of the ring along with the applicable  
16 description.



18 **18K Pave Diamond Cocktail Ring**  
19 **18K Gold Cocktail Ring Featuring 2.10**  
20 **Carats Of Round Brilliant Diamonds.**

21 <sup>3</sup> See Exhibit "A" for an image of the receipt of the subject ring.

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2 14.The ring was represented to 2.10 carats of diamonds. At the time of the purchase,  
3 Plaintiff had no way to know whether the diamond weight listed on the description  
4 was accurate and was entitled to assume that the label was accurate.

5 15.After receiving the ring for which the purchase was not returnable<sup>4</sup>, Plaintiff had the  
6 ring inspected to measure the total weight of the diamonds. Through detailed  
7 measurements performed by a gemologist, the ring was found to contain  
8 approximately 1.2 carats of diamonds. This is a discrepancy of approximately 0.9  
9 carats .

10 16. According to the 16 C.F.R. §23.17, the allowable range of weights based upon the  
11 description was 2.0955 to 2.1055 carats. The actual difference was far greater.

12 17.There is no indication on the description that the carat weight was approximated.

13 18.Defendant held themselves out as experts in the field of gemology and it was  
14 Defendant who examined the subject ring and determined its characteristics and  
15 selling price<sup>5</sup>.

16 19.Defendant intentionally overstated the weight of the diamonds.

17 20.The price paid to RealReal is based upon the weight of the gemstones in the jewelry.  
18 Small gemstones such as those in RealReal’s jewelry have a price per carat that is  
19 generally stable over long periods of time.  
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21 <sup>4</sup> See Exhibit “A”

<sup>5</sup> See Exhibit “B”, Defendant’s consignment terms, ¶¶ 3, 6A

1 21. Defendant bases the price that they sell The Real Real's jewelry to Plaintiff and  
2 members of the class on Defendant's analysis of the ring, including the weight of  
3 any gemstones.

4 22. By overstating the weight of the gemstones in RealReal's jewelry, Defendant  
5 charged Plaintiffs and the Class a higher price that should have been charged. As a  
6 direct result of this higher price, Plaintiff and members of the Class paid a higher  
7 price for the jewelry than they should have paid.

8 23. Because the price Plaintiff and members of the class paid for RealReal's jewelry is  
9 directly related to the weight of the gemstones in the jewelry, Plaintiff and members  
10 of the class are entitled to recover the difference between what they paid for  
11 RealReal's jewelry and what the jewelry would have been priced at with the correct  
12 gemstone weight. For example, if a Plaintiff paid \$500 per carat for the gemstones  
13 in RealReal's jewelry and the weight of the gemstones was 3 carats and was  
14 overstated by 10%, then the consumer overpaid \$140.<sup>6</sup> As shown below with  
15 respect to Plaintiff Basmadjian, the percentage difference was far greater.

16 24. Specifically, with respect to Plaintiff Basmadjian, the weight of the diamonds in her  
17 ring was overstated by 75%. Therefore, she is entitled to a refund of approximately  
18 75% of the price paid for her ring attributable to the diamond content. Defendant  
19 has within their exclusive control what portion of the price charged by RealReal was  
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21 <sup>6</sup>  $\$500 \times 3 = \$1,500$  for the cost of gemstones. If the weight was really 2.72 carats ( $1.1 \times 2.72 = 3$ ), then the consumer should have paid \$1,360 for the diamond portion of the ring.  $\$1,500 - \$1,360 = \$140$ .

1 for the diamond content of the ring. Hypothetically, if 50% of the cost of her ring  
2 was attributed to diamonds or approximately \$450, Ms. Basmadjian overpaid  
3 approximately \$193 for her ring<sup>7</sup>.

4 25. Jewelry appraisals are extremely subjective and are not a reliable measure of  
5 whether a class member paid more for their RealReal jewelry than they should have.  
6 Even if a piece of RealReal's jewelry were to appraise for an amount higher than the  
7 purchase price paid by Plaintiff or a member of the class, this is irrelevant as  
8 Plaintiffs have been overcharged by an amount that is capable of reasonable  
9 calculation.

10 26. Defendant knew and intended that Plaintiff and other members of the Class would  
11 rely upon the weights indicated on the product description.

12 27. Defendant knew that Plaintiff and other members of the Class would have no  
13 reasonable way to detect that the gemstone weights were overstated prior to  
14 purchase.

15 28. Defendant knew that Plaintiffs would be relying upon the product label and intended  
16 that Plaintiffs would rely upon the product label.

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18 **CLASS ACTION ALLEGATIONS**

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<sup>7</sup> 50% of the ring is attributable to the diamond content. She paid about \$900 for the ring and thus \$450 was for the diamond content. The weight was overstated by 75% and therefore, she should have paid \$257 for the diamonds. Therefore, he overpaid by approximately \$193.



1 29. Plaintiffs bring this action on their own behalf and on behalf of a proposed Class  
2 of all other persons similarly situated under F.R.C.P. 23(b)(2) and 23(b)(3). The  
3 Class Plaintiffs seek to represent is defined as:

- 4 a. All persons who, in the United States after December 1 2013 (the  
5 "Class Period"), purchased from Defendant: (1) one or more pieces of  
6 jewelry where the weight of gemstones indicated on the product label  
7 exceeded the actual weight of the gemstones in the jewelry by more  
8 than 1/100 of a carat (1 point, 2mg).

9 30. Excluded from the Class is Defendant, as well as its officers, employees,  
10 agents, board members and legal counsel, and any judge who presides over this  
11 action (or spouse or family member of presiding judge), as well as all past and  
12 present employees, officers and directors of Defendant.

13 31. Plaintiffs reserve the right to expand, limit, modify, or amend this class  
14 definition, including the addition of one or more subclasses, in connection with  
15 Plaintiffs' motion for class certification, or at any other time, based upon, *inter*  
16 *alia*, changing circumstances and/or new facts obtained during discovery.

17 32. *Numerosity*: The Class is composed of thousands of individuals, whose joinder  
18 in this action would be impracticable. The disposition of their claims through  
19 this class action will benefit all Class Members, the parties, and the courts.  
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1 33. *Existence and Predominance of Common Questions of Fact and Law:* There is a  
2 well-defined community of interest in questions of law and fact affecting the  
3 Class. These questions of law and fact predominate over individual questions  
4 affecting individual Class Members, including, but not limited to, the following:

- 5 a. Whether, during the Class Period, Defendant overstated the weight of  
6 gemstones in jewelry sold by Defendant by more than 1/100 of a carat  
7 (1 point, 2mg);
- 8 b. Whether Defendant's use of false and deceptive product labeling  
9 constituted false advertising under California law;
- 10 c. Whether Defendant engaged in unfair, unlawful and/or fraudulent  
11 business practices under California law;
- 12 d. Whether Defendant misrepresented and/or failed to disclose material  
13 facts about its product pricing and discounts;
- 14 e. Whether Defendant has made false and misleading statements of fact  
15 concerning the quality and nature of the jewelry sold by Defendant;
- 16 f. Whether Defendant's conduct, as alleged herein was intentional and  
17 knowing;
- 18 g. Whether Class Members have been harmed by Defendant's conduct  
19 alleged herein;  
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- 1 h. Whether Class Members are entitled to damages and/or restitution; and, if
- 2 so, what is the amount of revenues and/or profits Defendant received
- 3 and/or was lost by Class Members as a result of the conduct alleged
- 4 herein;
- 5 i. Whether Defendant was unjustly enriched by their deceptive practices;
- 6 j. Whether Defendant expressly warranted the weight of gemstones in the
- 7 product labels;
- 8 k. Whether Defendant is likely to continue to use false, misleading or
- 9 illegal product labeling such that an injunction is necessary; and
- 10 l. Whether Plaintiffs and Class Members are entitled to an award of
- 11 reasonable attorney's fees, pre-judgment interest and costs of suit.

12 34. *Typicality*: Plaintiff's claims are typical of, and are not antagonistic to, the

13 claims of all Class Members. Plaintiff and the Class Plaintiffs have all been

14 deceived (or were likely to be deceived) by Defendant's overstating of the

15 gemstone weight in the jewelry sold by Defendant.

16 35. *Adequacy*: Plaintiff is an adequate representative of the Class because Plaintiff is

17 a member of the Class and Plaintiff's interests do not conflict with the interests

18 of the Class Members Plaintiff seeks to represent. Plaintiff will fairly and

19 adequately represent and protect the interests of the Class because Plaintiff is

20 not antagonistic to the Class. Plaintiff has retained counsel who is competent

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1 and experienced in the prosecution of consumer fraud and class action litigation.  
2 Furthermore, Plaintiff has retained counsel experienced in class action litigation  
3 to prosecute his claims.

4 36. *Superiority*: A class action is superior to other available means for the fair  
5 and efficient adjudication of Plaintiff's and Class Members' claims. Because of  
6 the relatively modest size of individual Class Members' claims, few, if any,  
7 Class Members could afford to seek legal redress of the wrongs complained of  
8 herein on an individual basis. Absent class action, Class Members and the general  
9 public would not likely recover, or would not likely have the chance to recover,  
10 damages or restitution, and Defendant will be permitted to retain the proceeds of  
11 its misdeeds.

12 37. All Class Members, including Plaintiff, were exposed to one or more of  
13 Defendant's misrepresentations or omissions of material fact including  
14 Defendant's claims that the weight of gemstones indicated on the jewelry product  
15 label was higher than the actual weight. Due to the scope and extent of  
16 Defendant's consistent false advertising scheme, disseminated in a massive,  
17 years-long campaign to consumers via the Internet, TV, and print media, it can  
18 reasonably be inferred that such misrepresentations or omissions of material fact  
19 were uniformly made to all Class Members. In addition, it can be reasonably  
20 presumed that all Class Members, including Plaintiff, affirmatively acted in  
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1 response to the representations contained in Defendant's product labeling when  
2 purchasing jewelry from Defendant.

3 38. Plaintiff is informed and believes that Defendant keeps extensive computerized  
4 records of its customers through, *inter alia*, customer loyalty programs and general  
5 marketing programs. Defendant has one or more databases through which a  
6 significant majority of Class Members may be identified and ascertained, and it  
7 maintains contact information, including email and home mailing addresses,  
8 through which notice of this action could be disseminated in accordance with  
9 due process requirements.

10 39. A class action is an appropriate and superior method for the fair and efficient  
11 adjudication of the controversy given the following factors:

- 12 a. Common questions of law and/or fact predominate over any individual  
13 questions that may arise, and, accordingly, there would accrue enormous  
14 economies to both the court and the Class in litigating the common issues  
15 on a class wide basis instead of on a repetitive individual basis;
- 16 b. Class members' individual damage claims are too small to make individual  
17 litigation an economically viable alternative;
- 18 c. Despite the relatively small size of individual Class members' claims, their  
19 aggregate volume, coupled with the economies of scale inherent in  
20 litigating similar claims on a common basis, will enable this case to be  
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1 litigated as a class action on a cost-effective basis, especially when  
2 compared with repetitive individual litigation; and

3 d. No unusual difficulties are likely to be encountered in the management of  
4 this class action in that all questions of law and/or fact to be litigated at the  
5 liability stage are common to the Class.

6 40. To the best of Plaintiff's knowledge, no other action is pending on the subject  
7 matter of this case in any Court.

8 41. As such, Plaintiff seeks class certification under F.R.C.P. 23.

9  
10 **CALIFORNIA LAW APPLIES TO THE ENTIRE CLASS**

11 42. California's substantive laws apply to every member of the Class, regardless of  
12 where in the United States the class member resides. Defendant imposes on its users  
13 Terms of Service. See Exhibit "C". These terms must be accepted before a user is  
14 allowed to make use of Defendant's website. This contract provides as follows:

15 These TOS and the relationship between you and RealReal will be  
16 governed by the laws of the State of California without regard to its  
17 conflict of law provisions. You and RealReal agree to submit to the  
18 personal jurisdiction of the federal and state courts located in the County of  
San Francisco in the State of California with respect to any legal  
proceedings that may arise in connection with these TOS.

19 43. Further, California's substantive laws may be constitutionally applied to the claims  
20 of Plaintiff and the Class under the Due Process Clause, 14th Amend. § 1, and the  
21 Full Faith and Credit Clause, Art. IV § 1 of the U.S. Constitution. California has

1 significant contact, or significant aggregation of contacts, to the claims asserted by  
2 Plaintiff and all class members, thereby creating state interests that ensure that the  
3 choice of California state law is not arbitrary or unfair.

4 44. RealReal's United States headquarters and principal place of business is located in  
5 California. RealReal also owns property and conducts substantial business in  
6 California, and therefore California has an interest in regulating RealReal's conduct  
7 under its laws. RealReal's decision to reside in California and avail itself of  
8 California's laws, and to engage in the challenged conduct from and emanating out  
9 of California, renders the application of California law to the claims herein  
10 constitutionally permissible.

11 45. California is also the state from which RealReal's alleged misconduct emanated.  
12 This conduct similarly injured and affected Plaintiff and all other class members.

13 46. The application of California laws to the Class is also appropriate under California's  
14 choice of law rules because California has significant contacts to the claims of  
15 Plaintiff and the proposed Class, and California has a greater interest in applying its  
16 laws here than any other interested state.

17  
18 **FIRST CAUSE OF ACTION**  
19 **(Violation of the "Unfair" Prong of the UCL, California Business & Professions**  
20 **Code §17200, et seq.)**

21 47. Plaintiff re-alleges by reference as if fully set forth herein, all of the above  
paragraphs.

1 48. The UCL defines unfair business competition to include any "unlawful, unfair or  
2 fraudulent" act or practice, as well as any "unfair, deceptive, untrue or misleading"  
3 advertising. Cal. Bus. & Prof. Code § 17200. A business act or practice is "unfair"  
4 under the UCL if the reasons, justifications, and motives of the alleged wrongdoer  
5 are outweighed by the gravity of the harm to the alleged victims.

6 49. Defendant has violated the "unfair" prong of the UCL by overstating the carat  
7 weight of the gemstones in jewelry sold by Defendant.

8 50. These acts and practices were unfair because they caused Plaintiff, other members of  
9 the Class, and were likely to cause consumers to falsely believe that the weight of  
10 the gemstones in jewelry sold by Defendant was greater than actual. As a result,  
11 purchasers, including Plaintiff and other members of the Class, reasonably perceived  
12 that they were buying products which contained more gemstone weight than actual.  
13 Thus, Plaintiff and other members of the Class paid more for Defendant's jewelry  
14 than they would have otherwise had the true weight been identified. Furthermore,  
15 Plaintiff and other members of the Class were more likely to purchase a RealReal  
16 product perceiving that such purchases were bargains as compared to other jewelry  
17 stores. This perception has induced reasonable purchasers, including Plaintiff and  
18 other members of the Class, to buy such products, which they otherwise would not  
19 have purchased.  
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1 51.The gravity of the harm to members of the Class resulting from these unfair acts and  
2 practices outweighed any conceivable reasons, justifications, and/or motives of  
3 Defendant for engaging in such deceptive acts and practices. By committing the acts  
4 and practices alleged above, Defendant engaged in unfair business practices within  
5 the meaning of California Business & Professions Code §§ 17200, *et seq.*

6 52.Through its unfair acts and practices, Defendant has improperly obtained money  
7 from Plaintiff and members of the Class. As such, Plaintiff requests that this Court  
8 cause Defendant to restore this money to Plaintiff and all Class Members, and to  
9 enjoin Defendant from continuing to violate the UCL as discussed herein and/or  
10 from violating the UCL in the future. Otherwise, Plaintiffs, the Class, and members  
11 of the general public may be irreparably harmed and/or denied an effective and  
12 complete remedy if such an order is not granted.

13  
14 **SECOND CAUSE OF ACTION**

15 **(Violation of the "Fraudulent" Prong of the UCL, California Business &  
16 Professions Code §17200, *et seq.*)**

17 53.Plaintiff re-alleges by reference as if fully set forth herein, all of the above  
18 paragraphs.

19 54.The UCL defines unfair business competition to include any "unlawful, unfair or  
20 fraudulent" act or practice, as well as any "unfair, deceptive, untrue or misleading"  
21 advertising. Cal. Bus. & Prof. Code § 17200.

1 55. A business act or practice is "fraudulent" under the UCL if it is likely to deceive  
2 members of the consuming public.

3 56. Defendant's labeling and selling of jewelry overstating the weight of gemstones was  
4 "fraudulent" within the meaning of the UCL because they deceived Plaintiff and  
5 other members of the Class, and were likely to deceive members of the Class, into  
6 believing that jewelry sold by Defendant were of greater value than if the true  
7 gemstone weight had been disclosed. Plaintiff and other members of the Class were  
8 also likely to be deceived that jewelry sold by Defendant was a better value than that  
9 offered by other retailers. As a result, purchasers, including Plaintiff, reasonably  
10 perceived that they were receiving products which regularly sold in the retail  
11 marketplace at substantially higher prices (and were, therefore, worth more) than  
12 what they paid. This perception induced reasonable purchasers, including Plaintiff,  
13 to buy products from Defendant, which they otherwise would not have purchased at  
14 the same price.

15 57. Defendant's acts and practices as described herein have deceived Plaintiff and other  
16 members of the Class and were highly likely to deceive members of the consuming  
17 public. Specifically, in deciding to purchase consumer goods from Defendant,  
18 Plaintiffs relied upon Defendant's misleading and deceptive representations  
19 regarding the weight of gemstones in Defendant's jewelry. Each of these factors  
20 played a substantial role in Plaintiff's decision to purchase those products, and  
21

1 Plaintiff would not have purchased those items in the absence of Defendant's  
2 misrepresentations at the price paid. Accordingly, Plaintiff and other members of the  
3 Class have suffered monetary loss as a direct result of Defendant's practices  
4 described above.

5 58. As a result of the conduct described above, Defendant has been unjustly enriched at  
6 the expense of Plaintiff and members of the Class. Specifically, Defendant has been  
7 unjustly enriched by obtaining revenues and profits that it would not otherwise have  
8 obtained absent its false, misleading and deceptive conduct.

9 59. Through its unfair acts and practices, Defendant has improperly obtained money  
10 from Plaintiff and the Class. As such, Plaintiff requests that this Court cause  
11 Defendant to restore this money to Plaintiff and all Class Members, and to enjoin  
12 Defendant from continuing to violate the UCL as discussed herein and/or from  
13 violating the UCL in the future. Otherwise, Plaintiff, the Class, and members of the  
14 general public may be irreparably harmed and/or denied an effective and complete  
15 remedy if such an order is not granted.

16  
17 **THIRD CAUSE OF ACTION**  
18 **(Violation of the "Unlawful" Prong of the UCL, California Business & Professions**  
19 **Code § 17200, et seq.)**

20 60. Plaintiffs re-allege by reference as if fully set forth herein, all of the above  
21 paragraphs.

1 61.The UCL defines unfair business competition to include any "unlawful, unfair or  
2 fraudulent" act or practice, as well as any "unfair, deceptive, untrue or misleading"  
3 advertising. Cal. Bus. & Prof. Code § 17200.

4 62.A business act or practice is "unlawful" under the UCL if it violates any other law or  
5 regulation.

6 63.The FTCA prohibits "unfair or deceptive acts or practices in or affecting commerce"  
7 (15 U.S.C. § 45(a)(1)). The FTC has established guidelines that describe the accuracy  
8 with which gemstone weights must be stated under 16 C.F.R. §23.17. At no time  
9 was any indication made on the product label that gemstone weights were  
10 approximate.

11 64.Misstating the weight of the gemstones is unfair and deceptive.

12 65.By overstating the weight of the gemstones on RealReal's jewelry, RealReal  
13 violated the FTCA.

14 66.Defendant knew or should have known that RealReal was overstating the weight of  
15 gemstones in their jewelry. By selling jewelry to consumers knowing that the  
16 weights were overstated, RealReal approved of and adopted untrue and misleading  
17 statements. Thus, RealReal acted to violate the FTCA, Cal. Bus. & Prof. Code  
18 §17200 and §17500, and California Civil Code §1770.

19 67.California Business & Professions Code §17500 prohibits a business from  
20 misrepresenting the weight of goods.  
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1 68. California Civil Code §1770, subsection (a)(5) prohibits a business from  
2 representing that goods have quantities that they do not have. Representing that  
3 jewelry has a total carat weight greater than actually present violates subsection  
4 (a)(5).

5 69. Defendant's misrepresentation of gemstone weights violated and continues to violate  
6 the FTCA, 15 U.S.C. §45(a)(1), and 15 U.S.C. §52(a), as well as 16 C.F.R. §23.17.  
7 It also violated and continues to violate Cal. Bus. & Prof. Code §17501, and Cal.  
8 Civ. Code §1770 (a)(5) by representing on product labels that the quantity of the  
9 good contained is greater than actual.

10 70. As a result of the conduct described above, Defendant has been unjustly enriched at  
11 the expense of Plaintiff and members of the Class. Specifically, Defendant has been  
12 unjustly enriched by obtaining revenues and profits that it would not otherwise have  
13 obtained absent its false, misleading and deceptive conduct.

14 71. Through its unfair acts and practices, Defendant has improperly obtained money  
15 from Plaintiff and the Class. As such, Plaintiff requests that this Court cause  
16 Defendant to restore this money to Plaintiffs and all Class Members, and to enjoin  
17 Defendant from continuing to violate the UCL, and/or from violating the UCL in the  
18 future. Otherwise, Plaintiffs, the Class, and members of the general public may be  
19 irreparably harmed and/or denied an effective and complete remedy if such an order  
20 is not granted.  
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**FOURTH CAUSE OF ACTION**

**(Violation of the California False Advertising Law, California Business & Professions Code Sections 17500, *et seq.*)**

1  
2  
3 72.Plaintiffs re-allege by reference as if fully set forth herein, all of the above  
4 paragraphs.

5 73.The California False Advertising Law, California Business & Professions Code  
6 §17500, *et seq.*, prohibits unfair, deceptive, untrue, or misleading advertising,  
7 including, but not limited to, false statements as quality or quantity. In relevant part,  
8 §17500 states:

9  
10 It is unlawful for any person, firm, corporation or association,  
11 or any employee thereof with intent directly or indirectly to  
12 dispose of real or personal ... to make or disseminate or cause  
13 to be made or disseminated before the public in this state, or to  
14 make or disseminate or cause to be made or disseminated from  
15 this state before the public in any state ... or in any other  
16 manner or means whatever ... any statement, concerning that  
17 real or personal property ... which is untrue or misleading, and  
18 which is known, or which by the exercise of reasonable care  
19 should be known, to be untrue or misleading[.]

20  
21 74.Defendant's practice of overstating the weight of gemstones on labels attached to  
specific pieces of jewelry was a statement which was both untrue and misleading.  
Defendant was either fully aware or would have been aware through the exercise of  
reasonable care the untrue and misleading statement concerning the weight of  
gemstones on the label for a specific piece of jewelry.

1 75. Defendant RealReal disseminated these untrue and misleading statements from  
2 California.

3 76. RealReal conducted business within the state of California by purchasing goods  
4 from California and selling them on the TheRealReal.com to California residents.

5 77. Defendant RealReal, with full knowledge of the untrue and misleading nature of the  
6 weights on the labels, sold these items to unwitting consumers.

7 78. RealReal acted to disseminate untrue and misleading information to consumers.

8 79. Through its unfair acts and practices, RealReal has improperly obtained money from  
9 Plaintiff and the Class. As such, Plaintiff requests that this Court cause Defendant to  
10 restore this money to Plaintiff and all Class Members, and to enjoin Defendant from  
11 continuing to violate the UCL, and/or from violating the UCL in the future.  
12 Otherwise, Plaintiff, the Class and, members of the general public may be  
13 irreparably harmed and/or denied an effective and complete remedy if such an order  
14 is not granted.

15  
16 **FIFTH CAUSE OF ACTION**

17 **(Violation of the Consumer Legal Remedies Act, California Civil Code § 1750, *et***  
18 ***seq.*, Injunctive Relief)**

19 80. Plaintiff re-alleges by reference as if fully set forth herein, all of the above  
20 paragraphs.  
21

1 81. At all times relevant hereto, there was in full force and effect the California  
2 Consumers Legal Remedies Act ("CLRA"), Cal. Civ. Code § 1750.

3 82. This cause of action is brought pursuant to the CLRA.

4 83. Plaintiff and each member of the proposed Class are "consumers" within the  
5 meaning of California Civil Code §1761(d).

6 84. Defendant's sale of consumer goods to Plaintiffs and members of the Class were  
7 "transactions" within the meaning of California Civil Code §1761(e). The products  
8 purchased by Plaintiff and members of the proposed Class are "goods" within the  
9 meaning of California Civil Code §1761(a).

10 85. As described herein, Defendant violated the CLRA by falsely representing the  
11 quantity of gemstones contained within the jewelry by stating that the item contained  
12 more gemstone weight than actual. Defendant inflated the purported weight of  
13 gemstones in violation of Cal. Civ. Code §1770(a)(5).

14 86. Plaintiff and other members of the Class reasonably relied upon Defendant's false  
15 representations in deciding to purchase the jewelry from Defendant. Plaintiff would  
16 not have purchased such items at the price paid absent Defendant's unlawful  
17 conduct. As a result of these acts and practices, Plaintiff and other members of the  
18 Class have suffered damage in that Plaintiff and other members of the Class have  
19 spent money with Defendant that Plaintiff and other members of the Class would not  
20 have otherwise spent absent Defendant's unlawful and misleading acts and practices.  
21



1 87. In accordance with § 1782(a) of the CLRA, on December 4, 2017, Plaintiff's  
2 counsel served RealReal, by certified mail, return receipt requested, with notice of  
3 its alleged violations of the CLRA.

4 88. If RealReal does not fully meet the demand set forth in that letter, then  
5 Plaintiff will amend or seek leave to amend this complaint in order to seek  
6 the following relief under CLRA § 1780, for RealReal's violations of CLRA  
7 § 1770(a)(5):

- 8 • actual damages under Cal. Civ. Code § 1780(a)(1);
- 9 • punitive damages under Cal. Civ. Code § 1780(a)(4);
- 10 • attorneys' fees and costs under Cal. Civ. Code § 1780(d); and
- 11 • any other relief the Court deems proper under Cal. Civ.  
12 Code § 1780(a)(5).

13  
14 **SIXTH CAUSE OF ACTION**  
**FRAUD**

15 89. Plaintiff incorporates by reference all allegations of the preceding paragraphs as  
16 though fully set forth herein.

17 90. Defendant acted to systematically misrepresent the weights of gemstones contained  
18 within RealReal's jewelry and sold on TheRealReal.com Defendant acted with full  
19 knowledge that the weights of gemstones contained in TheRealReal.com's products  
20  
21

1 was overstated. By so acting, Defendant approved of and adopted the  
2 misrepresentations in the weights of RealReal's products.

3 91.The weight of the gemstones in RealReal's products is a material fact that would be  
4 reasonably relied upon by all purchasers of RealReal's products.

5 92.The misrepresentations, nondisclosure, and/or concealment of material facts made  
6 by Defendant to Plaintiff and the members of the Class, as set forth above, were  
7 known, or through reasonable care should have been known, by Defendant to be  
8 false and material and were intended to mislead Plaintiffs and the members of the  
9 Class.

10 93.Plaintiff and the Class were actually misled and deceived and were induced by  
11 Defendant to purchase Defendant RealReal's products from the TheRealReal.com,  
12 which they would not otherwise have purchased, or would have paid substantially  
13 less for.

14 94.Plaintiff and the Class acted reasonably in relying that the weights of gemstones  
15 stated on the label for RealReal's jewelry was accurate and had no reasonable way to  
16 determine that the weights were not accurate.

17 95.As a result of the conduct of Defendant, Plaintiffs and the Class members have been  
18 damaged in an amount to be determined at trial.

19  
20 **SEVENTH CAUSE OF ACTION**  
21 **NEGLIGENT MISREPRESENTATION**

1 96.Plaintiff incorporates by reference all allegations of the preceding paragraphs as  
2 though fully set forth herein.

3 97.Defendant had a duty to provide honest and accurate information to its customers so  
4 that customers could make informed decisions on the substantial purchase of  
5 jewelry.

6 98.Defendant specifically and expressly misrepresented material facts to Plaintiff and  
7 Class members, as discussed above. Defendant was aware that the weights of  
8 gemstones stated in labels of RealReal’s products were systematically overstated.

9 99.Defendant knew, or in the exercise of reasonable diligence, should have known, that  
10 the ordinary and reasonable consumer would be misled by Defendant’s misleading  
11 and deceptive representations.

12 100. Defendant was aware that the weights stated on RealReal’s product’s labels were  
13 not accurate.

14 101. Plaintiff and the Class members justifiably relied on Defendant’s  
15 misrepresentations and have been damaged thereby in an amount to be determined at  
16 trial.

17  
18 **EIGHTH CAUSE OF ACTION**  
**BREACH OF EXPRESS WARRANTY**

19 102. Plaintiff incorporates by reference all allegations of the preceding paragraphs as  
20 though fully set forth herein.  
21

1 103. By the terms of the consignment agreement, Exhibit B, Defendant was the sole  
2 source of determination of the

3 104. At all relevant times, Defendant expressly warranted that RealReal's products  
4 contained gemstones of weights as indicated on the product label.

5 105. Defendant acted in systematically misrepresenting the weights of gemstones  
6 contained within RealReal's jewelry and sold by TheRealReal.com. Defendant acted  
7 with full knowledge that the weights of gemstones contained in RealReal's products  
8 were overstated. By so acting, Defendant approved of and adopted the  
9 misrepresentations in the weights of RealReal's products.

10 106. Defendant knew and expected or should have known and expected, and intended  
11 Plaintiff and members of the Class to rely on their warranties.

12 107. The representations contained or constituted affirmations of fact or promises  
13 made by Defendant which related to the goods and became part of the basis of the  
14 bargain creating an express warranty that the goods shall conform to the affirmations  
15 of fact or promises.

16 108. In purchasing RealReal's products, Plaintiff and members of the Class reasonably  
17 relied on the skill, judgment, representations, and foregoing express warranties of  
18 Defendant.

19 109. These warranties and representations were false in that RealReal's products did  
20 not contain the weight of gemstones indicated on the label.  
21

1 110. Because RealReal's products did not conform to Defendant's express  
2 representation, Defendant breached the warranties.

3 111. As a foreseeable, direct, and proximate result of the breach of express warranties  
4 by Defendant, Plaintiff and other members of the Class suffered injuries and  
5 damages as alleged herein.

6 **JURY TRIAL REQUESTED**

7 Plaintiff requests a jury trial on all issues so triable.

8 **PRAYER FOR RELIEF**

9  
10 WHEREFORE, Plaintiff, individually and on behalf of the other members of the  
11 proposed Class, request that this Court award relief as follows:

12 A. An order certifying that this action may be maintained as a class action,  
13 that Plaintiff be appointed as Class Representative and Plaintiff's counsel  
14 be appointed Class Counsel;

15 B. Pursuant to Plaintiff's causes of action, a judgment awarding Plaintiff and  
16 all members of the Class restitution and/or other equitable relief, including,  
17 but not limited to, restitutionary disgorgement of all profits and unjust  
18 enrichment that Defendant obtained from Plaintiffs and the Class as a  
19 result of its unlawful, unfair and fraudulent business practices described  
20 herein;

1 C. An order enjoining Defendant from continuing to violate the UCL, CLRA,  
2 and CFAL, as described herein, and/or an order enjoining Defendant from  
3 violating the UCL, CLRA, and CFAL.

4 D. A judgment awarding Plaintiff and other members of the Class their costs  
5 of suit; including reasonable attorney's fees pursuant to Code of Civil  
6 Procedure§ 1021.5 and as otherwise permitted by statute; and pre and post-  
7 judgment interest;

8 E. Such other and further relief as the Court deems appropriate.

9  
10 Date: December 4, 2017

11 **Excolo Law, PLLC**

12 by:     /s/ Keith Altman  
13 Keith Altman

14 Keith Altman (SBN 257309)  
15 Solomon Radner (*pro hac vice to be applied for*)  
26700 Lahser Road, Suite 401  
16 Southfield, MI 48033  
516-456-5885  
17 Email: kaltman@lawampmmt.com  
sradner@1800lawfirm.com

18 **1-800-LAWFIRM**

19 Ari Kresch (*pro hac vice to be applied for*)  
26700 Lahser Road, Suite 401  
20 Southfield, MI 48033  
516-456-5885  
800-LawFirm  
21 Email: akresch@1800lawfirm.com

**DECLARATION OF KEITH ALTMAN**  
**PURSUANT TO CALIFORNIA CIVIL CODE § 1780(d)**

I, Keith Altman, declare as follows:

1. I submit this declaration pursuant to section 1780 (d) of the California Consumers Legal Remedies Act. I have personal knowledge of the matters set forth below and if called as a witness could and would be competent to testify thereto.

2. Defendant RealReal, Inc. (“RealReal”) is a Delaware Corporation with its principle place of business at 55 Francisco Street, Suite 600, San Francisco, CA 94133.

3. This action is being commenced in the Northern District of California. Defendant’s principle place of business is located within the Northern District of California.

I declare under the penalty of perjury under the laws of the State of California and the United States that the foregoing is true and correct and that this declaration was executed on December 4, 2017 in Southfield, MI.

/s/ Keith Altman

Keith Altman

**VERIFICATION**

1  
2 I, the undersigned, certify and declare that I have read the foregoing  
3 complaint, and know its contents.

4 I am the attorney for Plaintiffs to this action. Such parties are absent from the  
5 county where I have my office and is unable to verify the document described  
6 above. For that reason, I am making this verification for and on behalf of the  
7 Plaintiffs. I am informed and believe on that ground allege the matters stated in  
8 said document are true.

9 I declare under penalty of perjury under the laws of the State of California  
10 that the foregoing is true and correct.

11 Executed on December 4, 2017, at Southfield, Michigan.

12  
13 Respectfully Submitted,

14 **EXCOLO LAW, PLLC,**  
15 By: /s Keith Altman  
Attorney for Plaintiffs

16 Keith L. Altman, SBN 257309  
17 26700 Lahser Road, Suite 401  
18 Southfield, MI 48933  
516-456-5885  
kaltman@lawampmmt.com

19 *Attorneys for Plaintiffs and the Class*  
20  
21



# EXHIBIT A



**The RealReal - Buy+Sell Luxury**  
 Use our app for exclusive sales & shop with ease.



GET

Limited Time Only. Earn up to \$250 in Site Credit\* - [See Details](#)  
 Spend \$250, Earn \$50 | Spend \$500, Earn \$100 | Spend \$1,000, Earn \$250

Hi, become a First Look member.

Get \$125 - Refer Friends USD (\$)



- NEW ARRIVALS
- WOMEN
- MEN
- JEWELRY & WATCHES
- ART & HOME
- SALE
- CONSIGN

Order #

## ORDER SUMMARY

Order Number: R328804053  
 Order Date: AUG 30, 17

ORDER NOT RETURNABLE

ACCOUNT INFO

- MY WAIT LIST
- MY PURCHASES
- MY SALES
- CREDITS

ITEM	DESCRIPTION	COLOR	SKU	SIZE	UNIT PRICE
	<b>18K Pave Diamond Cocktail Ring</b> 18K Gold Cocktail Ring Featuring 2.10 Carats Of Round Brilliant Diamonds.		RRING29464		\$1,495.00
					787580916782
					<b>CONSIGN</b>

<b>Subtotal:</b>	\$1,495.00
Sales Tax:	\$55.62
Shipping:	\$30.00
Promotion (40% Off The Jewelry & Watch Wish List):	-\$598.00
<b>Total:</b>	\$982.62
<b>Payment(s):</b>	
AMERICAN EXPRESS 1018:	\$982.62

### BECOME A FIRST LOOK MEMBER

For \$10 a month, get 24-hour advance access to sales and special invitations to monthly promotions.

[SIGN UP NOW](#)

### CONSIGN WITH US

It pays. Receive up to 70% of each item's sale price.

[CONSIGN](#)

### GIVE A GIFT CARD

Give the gift of luxury and style with a RealReal gift card.

[PURCHASE](#)

### QUESTIONS?

Speak to one of our experts toll free: **(855) 435-5893**  
 5am-6pm PDT, Mon-Fri  
 7am-4pm PDT, Sat-Sun

[contact@TheRealReal.com](mailto:contact@TheRealReal.com)

#### CUSTOMER CARE

- Contact Us
- Authenticity
- Shipping Information
- Returns
- Designer Directory
- Consignment
- FAQ
- Sustainability
- International Purchases

#### COMPANY

#### TOP FASHION BRANDS

- Chanel
- Hermès
- Louis Vuitton
- Christian Louboutin
- Prada
- Celine
- Jimmy Choo
- Gucci
- Valentino
- Burberry

#### TOP CATEGORIES

- Women's Clothing
- Handbags
- Shoes
- Boots
- Accessories
- Dresses
- Scarves
- Men's Clothing
- Neckties
- Wallets

#### TOP FINE JEWELRY & WATCH BRANDS

- Cartier
- Van Cleef & Arpels
- Tiffany & Co
- Chanel Watches
- Rolex
- Bvlgari
- David Yurman
- Chopard
- Baume & Mercier
- Ippolita



# EXHIBIT B

Limited Time Only. Earn up to \$250 in Site Credit!\* - [See Details](#)  
Spend \$250, Earn \$50 | Spend \$500, Earn \$100 | Spend \$1,000, Earn \$250

[Sign In or Create Account](#)



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## CONSIGNMENT TERMS

[View Consignor Commission Rates »](#)

[ABOUT](#)  
[TEAM](#)  
[PRESS](#)  
[CONTACT](#)  
[AUTHENTICITY](#)  
[DESIGNER DIRECTORY](#)  
[SHIPPING](#)  
[RETURNS](#)  
[FAQ](#)  
[PRIVACY](#)  
[TERMS](#)

**IF NOT SOONER TERMINATED AS PROVIDED HEREIN, THIS AGREEMENT RENEWS AUTOMATICALLY FOR SUCCESSIVE ONE-YEAR TERMS ON THE FINAL DAY OF THE MONTH THAT IS ONE YEAR FROM THE DATE THE CONSIGNOR EXECUTES THIS AGREEMENT (THE "EFFECTIVE DATE" AND THE "TERM").**

### 1. RECITALS

The RealReal is engaged in the marketing and sale of luxury designer items, jewelry, watches, fine art and home goods;

Consignor owns or controls and has the right to sell certain items, described and itemized on The RealReal's online and other forms, or collected from Consignor (the "**Consignor**") by an employee of The RealReal as part of its consignor service (collectively, the "**Property**"). Consignor wishes to sell that Property.

Consignor desires that the Property be sold on consignment by The RealReal, and The RealReal wishes to sell that Property on behalf of Consignor. This means that Consignor transfers possession but not ownership of the Property to The RealReal, subject to these Consignment Terms (the "**Agreement**").

Therefore, in consideration of the mutual premises and covenants contained in this Agreement, the receipt and sufficiency of which is acknowledged, and expressly subject to the provisions of The RealReal's Terms of Service (see The RealReal's website at [www.therealreal.com](http://www.therealreal.com)), which terms may be amended from time to time at The RealReal's sole discretion, the parties agree as follows:

### 2. DELIVERY OF PROPERTY; RISK OF LOSS; INSURANCE

Consignor makes the Property available to The RealReal on a consignment basis and The RealReal accepts the Property from Consignor on a consignment basis only. All risk of loss or damage of the Property will pass to The RealReal only when The RealReal takes physical possession of the Property. Consignor retains all risk of loss or damage to the Property until that time; however, if Consignor uses The RealReal's approved method of shipment to The RealReal, specifically using The RealReal's label and current integrated shipping arrangement (the "**Label**"), then The RealReal will insure or arrange for a third party to insure each Property shipment against loss or damage in transit. A "shipment" means items of Property shipped together under one Label.

Subject to the foregoing, The RealReal shall insure the Property in such amounts and against such risks as to which such goods are customarily insured, including insurance for theft and damage while in The RealReal's possession, and shall provide evidence of such insurance coverage to Consignor as and when requested. If the Property is damaged or lost while in The RealReal's possession, then a Property Sale, as defined below at Section 7, will be deemed to have occurred and The RealReal will reimburse Consignor in the amount of Consignor's Commission (also defined below), based on the damaged or lost Property's actual or, where a sale has not occurred, the estimated Net Selling Price(s), as defined at Section 8, which is determined solely by The RealReal. **This remedy shall constitute the sole remedy and entire recourse of Consignor against The RealReal and is in lieu of any other remedy available as a matter of law or equity.**

### 3. ACCEPTANCE OF PROPERTY; CONDITION OF ITEMS

The RealReal only accepts Property: (1) it determines in its sole discretion to be in very good to excellent condition; (2) that is listed in its Designer Directory (see The RealReal's website at [www.therealreal.com/designers](http://www.therealreal.com/designers) for items currently being accepted); (3) it determines in its sole discretion to be authentic; and (4) that is made available to The RealReal in full compliance with the representations and warranties Consignor makes pursuant to this Agreement ("**Acceptance**").

Upon receipt, The RealReal will evaluate the Property to determine its authenticity, quality and value. Condition issues will affect the valuation. Property that does not meet The RealReal's quality standards will not be Accepted and will be returned to Consignor at Consignor's expense (see "**Unauthenticated Items**" and "**Consignment Period and Return of Property**" below).

### 4. UNAUTHENTICATED, COUNTERFEIT, OR STOLEN ITEMS

**Consignor is responsible for ensuring the authenticity of all items that Consignor offers or provides for consignment.** In the event The RealReal determines it cannot confirm the authenticity of any item of Property offered or provided for consignment, it shall have the right in its sole discretion to refuse to Accept the item. In the event that The RealReal determines at any time that an item of Property is counterfeit, The RealReal shall notify Consignor that it has made such determination. **Consignor acknowledges and agrees that any item The RealReal determines to be counterfeit will not be returned to Consignor and will be destroyed.** See <https://www.therealreal.com/authenticity>.

Consignor acknowledges and agrees that The RealReal is subject to laws and regulations relating to claims that consigned items have been stolen. The RealReal takes reports of stolen goods seriously and will cooperate with law enforcement in all investigations.

### 5. CONSIGNMENT PERIOD AND RETURN OF PROPERTY

The "**Consignment Period**" for an item of Property begins on Acceptance and ends 365 days thereafter, whether or not such Consignment Period extends beyond the term of this Agreement. At any time during the Consignment Period, and subject to this provision, Consignor may request The RealReal return all or some of the Property, upon written notice to The RealReal and so long as the item of Property has not already been sold (the "**Return Request**"). Upon such Return Request, The RealReal will make its best efforts to remove the item of Property from the site before it is sold.

(a) If the Return Request is made **within 30 days** from Acceptance, as defined above, the Property will be returned within 30 days of the Return Request. The RealReal reserves the right to pass on all costs of such returns to the Consignor and in such case, all costs of return shall be deducted as available from Consignor's pending Commissions; where such pending Commissions are not available, The RealReal shall have no obligation to return such Property unless and until Consignor has provided for the cost of return shipping at its sole expense.

Additionally, Consignor acknowledges and agrees if Consignor requests the return of Property within this first 30 days after Acceptance, The RealReal reserves the right to charge Consignor a fee of \$100 per fine art piece, or \$15 per every other item of Property, which fee reflects the up-front costs to The RealReal of storing, cataloging and photographing the Property in preparation for sale.

(b) If the Return Request is made **more than 30 days** after acceptance, the Property will be returned within 30 days of Return Request and all costs of returning the Property to the Consignor will be borne by The RealReal. For items that remain unsold after 365 days from Acceptance, The RealReal will, at Consignor's option and The RealReal's cost: (i) return the items to the Consignor, or (ii) donate the items to a charity of The RealReal's choice. If The RealReal is unable to contact the Consignor at the current email or physical address provided by Consignor, the items will be donated to a charity of The RealReal's choice.

### 6. EFFORTS TO SELL; PRICE

Subject to Consignor's performance of its obligations under this Agreement, The RealReal will display on its site and make commercially reasonable efforts to sell the Property. Consignor acknowledges and agrees that:

(a) The RealReal in its sole discretion will determine the initial selling price for the Property (the "**Initial Sale Price**"), based on its evaluation of the Property together with its determination of the current market price for each specific item of Property.

(b) In order to market and promote the sale of the item, The RealReal will allow an immediate site-wide 20% discount to apply, which will affect the Initial Sale Price.

(c) The RealReal may offer additional discounts and promotions during the Consignment Period, at its sole discretion and without notice to Consignor as a means to efficiently market and sell the Property, unless The RealReal and Consignor have otherwise agreed in writing to a specific price at which an item must be sold.

### 7. TITLE TO PROPERTY

Title to and ownership of the Property will remain with Consignor until a Property Sale occurs. A "Property Sale" shall be deemed to have occurred where an item of Property is:

- (a) Sold by The RealReal and not returned to The RealReal within the period specified in The RealReal's then-current Return Policy (see [www.therealreal.com/returns](http://www.therealreal.com/returns));
- (b) Lost or stolen from The RealReal's stock on hand;
- (c) Damaged or destroyed while in The RealReal's possession.

## 8. PAYMENT AND COMMISSIONS

Upon a Property Sale, the net selling price upon which all Commissions are based shall equal the price of the item of Property sold, less applicable discounts, excluding taxes and shipping (the "**Net Selling Price**").

(a) Consignor acknowledges and agrees it will receive the following Commission (as defined below, the "**Commission**") based on the Net Selling Price of an item of Property:

- (1) A Commission equal to 55% of the Net Selling Price (i) for all items priced at \$120 or less or, (ii) where the total of the items sold (the "**Sales**") is less than \$1,500 during the Commission Period, as defined below;
- (2) A Commission equal to 60% of the Net Selling Price where Sales during the Commission Period reach between \$1,500 to \$9,999 during the Commission Period, as defined below;
- (3) A Commission equal to 70% of the Net Selling Price where Sales during the Commission Period total \$10,000 or more.

**(4) Regardless of the sales-based Commission rates set forth above, for any items priced at \$120 or less, the 55% Commission rate will always apply to that item.**

(b) The applicable Commission rate will reset on the one-year anniversary of the first Property Sale under this Agreement (the "**Commission Period**") and reset annually thereafter as follows:

- (1) For Consignors with Sales of less than \$1,500 during the last Commission Period, the Commission will reset to 55% for the next Commission Period;
- (2) For Consignors with Sales of between \$1,500 and \$9,999 during the last Commission Period, the Commission will reset to 60% for the next Commission Period;
- (3) For Consignors with Sales of \$10,000 or more during the last Commission Period, the Commission will reset to 70% for the next Commission Period.

**(4) Items priced at a price of \$120 or less are always subject to the 55% Commission Rate.**

The RealReal may at any time and in its sole discretion (i) temporarily increase the Commission rate from time to time for promotional reasons without notice or (ii) make other changes to its Commission structure and the Commissions upon at least fourteen (14) days' notice to you in accordance with Section 14. The Commission shall be Consignor's sole compensation under this Agreement.

The RealReal typically begins processing Commission payments on the 15th day of every month for the sale period beginning on the 1st of the previous month to the last day of the previous month. For example, payments processed on April 15th would cover the sale period from March 1 through March 31. Such payments will be made to the Consignor by physical check, direct deposit or where Consignor elects another payment method acceptable to The RealReal.

The timing of processing and delivering Commission payments will vary by the payment method selected by Consignor but payment processing will typically take at least two business days to complete and issue to Consignor.

In the event of any dispute between the Parties, The RealReal shall have no obligation to pay any Commission or other amount otherwise due to Consignor, including without limitation amounts unrelated to the dispute, unless and until such dispute is resolved. The RealReal shall be entitled to withhold any Commissions (including any otherwise due for items of Property not then subject to the dispute) in full or partial satisfaction of any amounts due to The RealReal.

## 9. TERMINATION

Either Party may terminate this Agreement at any time, for any reason. Termination shall be effective when either Party serves written notice thereof on the other Party. Costs listed above under Section 5, Consignment Period and Return of Property, will apply.

## 10. NO ASSIGNMENT

Consignor may not assign this Agreement or any interest herein without The RealReal's prior written consent and any prohibited assignment shall be void.

## 11. NO PROPERTY WARRANTIES

The RealReal does not make any representation or warranty either express or implied about any item of Property, except to the extent a warranty is required by law and cannot be disclaimed.

**THE REALREAL DISCLAIMS ANY AND ALL WARRANTIES, EXPRESS AND IMPLIED, RELATING TO ITS SERVICES OR ACTIVITIES HEREUNDER. IN NO EVENT WILL THE REALREAL'S LIABILITY HEREUNDER EXCEED THE AMOUNT IT HAS ACTUALLY RECEIVED AS A RESULT OF SELLING CONSIGNOR'S PROPERTY HEREUNDER. THE FOREGOING DISCLAIMER AND LIMITATION IS A FUNDAMENTAL PART OF THE BASIS OF THE REALREAL'S BUSINESS, AND THE REALREAL WOULD NOT ENTER INTO THIS AGREEMENT WITHOUT SUCH DISCLAIMER AND LIMITATION.**

#### **12. CONSIGNOR'S REPRESENTATIONS, WARRANTIES, AND INDEMNIFICATION**

Consignor hereby represents and warrants that it has good and marketable title to each item of Property and has the right to consign and sell the Property, none of which is subject to any liens or other encumbrances, and further represents and warrants that the Property does not infringe upon or violate any trademark, copyright, or other proprietary right of any third party, any state or federal law, or any administrative regulation. Consignor hereby agrees to indemnify and hold The RealReal harmless from all damages, suits, litigation, awards, and costs, including but not limited to attorneys' fees and costs, as a result of or arising out of in any way The RealReal's display or sale of the Property for any reason whatsoever, including but not limited to civil or criminal suits over authenticity, legality, ownership, infringement of copyright or trademark, or any other claim or litigation.

#### **13. GOVERNING LAW**

This Agreement, or the breach thereof, and all claims relating to or arising out of this Agreement, whether in contract, tort or otherwise, shall be governed by the laws of New York, without regard to its conflicts of laws principles. The Parties hereby irrevocably consent to the jurisdiction of a federal or state court located in the County of New York, Borough of Manhattan with respect to any matter arising under this Agreement.

#### **14. AMENDMENTS TO THIS AGREEMENT**

The RealReal may update or change any of the terms and conditions of this Agreement at any time and in its sole discretion by notifying Consignor at the email address or physical address Consignor has provided in this Agreement. Consignor hereby agrees that all agreements, notices, disclosures, and other communications that The RealReal provides electronically satisfy any legal requirement that such communications be in writing. Consignor shall be bound by all revised terms. If Consignor does not agree to any revised terms of this Agreement, including any change to the Commissions, Consignor's sole recourse is to terminate this Agreement in accordance with Section 9 before the effective date of the revised terms. Notwithstanding the foregoing, any revised terms shall not apply retroactively to Sales made prior to the effective date of the revised terms.

#### **15. ENTIRE AGREEMENT**

This Agreement sets forth the final, complete and exclusive agreement of the Parties regarding the subject matter hereof, and terminates and supersedes all prior understandings or agreements on the subject matter hereof. Except as set forth in Section 8 and Section 14, this Agreement may be modified only by a writing duly executed by both Parties.

#### **16. NO IMPLIED WAIVER**

Any failure of either Party to enforce any provision of this Agreement shall not constitute a waiver thereof or of any other provision herein.

#### **17. SEVERABILITY**

In the event any term of this Agreement is found by any court to be void or otherwise unenforceable, the remainder of this Agreement shall remain valid and enforceable as though such term were absent upon the date of its execution.

#### **18. SURVIVAL OF TERMS AFTER AGREEMENT ENDS**

Notwithstanding any other provision or general legal principles to the contrary, any provision of this Agreement that imposes or contemplates continuing obligations on a Party will survive the expiration or termination of this Agreement.

#### **19. HEADINGS**

Headings used in this Agreement are provided for convenience only and shall not be used to construe meaning or intent.

**BECOME A  
FIRST LOOK MEMBER**

For \$10 a month, get 24-hour advance access to sales and special invitations to monthly promotions.

[SIGN UP NOW](#)

**CONSIGN WITH US**

It pays. Receive up to 70% of each item's sale price.

[CONSIGN](#)

**GIVE A  
GIFT CARD**

Give the gift of luxury and style with a RealReal gift card.

[PURCHASE](#)

**QUESTIONS?**

Speak to one of our experts toll free: **(855) 435-5893**  
5am–6pm PDT, Mon–Fri  
7am–4pm PDT, Sat–Sun

[contact@TheRealReal.com](mailto:contact@TheRealReal.com)

**CUSTOMER CARE**

- Contact Us
- Authenticity
- Shipping Information
- Returns
- Designer Directory
- Consignment
- FAQ
- Sustainability
- International Purchases

**COMPANY**

- About Us
- Team
- Careers
- Press
- Business Sellers
- Consignor Affiliate Program
- Influencer Program
- Terms of Service
- Consignor Terms
- Privacy

**TOP FASHION BRANDS**

- Chanel
- Hermès
- Louis Vuitton
- Christian Louboutin
- Prada
- Céline
- Jimmy Choo
- Gucci
- Valentino
- Burberry

**TOP CATEGORIES**

- Women's Clothing
- Handbags
- Shoes
- Boots
- Accessories
- Dresses
- Scarves
- Men's Clothing
- Neckties
- Wallets

**TOP FINE JEWELRY & WATCH BRANDS**

- Cartier
- Van Cleef & Arpels
- Tiffany & Co
- Chanel Watches
- Rolex
- Bvlgari
- David Yurman
- Chopard
- Baume & Mercier
- Ippolita

**A SUSTAINABLE LUXURY COMPANY**

Honoring heritage brands and extending the lifecycle of luxury items.



©2017 The RealReal, Inc.



# EXHIBIT C

Limited Time Only. Earn up to \$250 in Site Credit!\* - [See Details](#)  
Spend \$250, Earn \$50 | Spend \$500, Earn \$100 | Spend \$1,000, Earn \$250

[Sign In or Create Account](#)



[NEW ARRIVALS](#) [WOMEN](#) [MEN](#) [JEWELRY & WATCHES](#) [ART & HOME](#) [SALE](#) [CONSIGN](#)

## TERMS OF SERVICE

Welcome to the website (the "Site") of The RealReal, Inc. ("The RealReal"). These Terms of Service ("TOS") govern your use of the Service (defined below) and the Site. By using the Site or Service, you are stating that you have read and understand, and agree to be bound by, these TOS. You agree that these TOS incorporate and include The RealReal's Privacy Policy available at <http://www.therealreal.com/privacy>. The Site offers a wide range of services and sometimes additional terms ("Additional Terms") may apply to your use thereof. For example, consignors are subject to additional Consignment Terms governing the consignment of items on the Site, and buyers and sellers of art are subject to the [Conditions of Sale](#). Certain portions of the Site may not be available to you unless you have registered. If you do not agree to be bound by these TOS and the Privacy Policy, you may not use the Service or Site in any way.

[ABOUT](#)  
[TEAM](#)  
[PRESS](#)  
[CONTACT](#)  
[AUTHENTICITY](#)  
[DESIGNER DIRECTORY](#)  
[SHIPPING](#)  
[RETURNS](#)  
[FAQ](#)  
[PRIVACY](#)  
[TERMS](#)

### DESCRIPTION OF SERVICES

In the Site, The RealReal provides users with access to sales of luxury resale items and art online and related services ("the Service"). You are responsible for obtaining access to the Site, and that access may involve third-party fees (such as Internet service provider or airtime charges). In addition, you must provide and are responsible for all equipment necessary to access the Site.

### LICENSE AND SITE ACCESS

The RealReal grants you a limited license to access the Site and Service for personal use. This license does not include any downloading or copying of account information for the benefit of another vendor or any other third party; caching, unauthorized hypertext links to the Site and the framing of any Content (defined below) available through the Site, uploading, posting, or transmitting any content that you do not have a right to make available (such as the intellectual property of another party); uploading, posting, or transmitting any material that contains software viruses or any other computer code, files or programs designed to interrupt, destroy or limit the functionality of any computer software or hardware or telecommunications equipment; any action that imposes or may impose (in The RealReals sole discretion) an unreasonable or disproportionately large load on The RealReal's infrastructure; or any use of data mining, robots, or similar data gathering and extraction tools. You may not bypass any measures used by The RealReal to prevent or restrict access to the Site or Service. Any unauthorized use by you shall terminate the permission or license granted to you by The RealReal.

### MEMBERSHIP ELIGIBILITY

You are not permitted to access the Service or Site if you are under the age of 18 or if your account has been suspended or removed by The RealReal for any reason. You may not have more than one active account. Additionally, you are prohibited from selling, trading, or otherwise transferring your RealReal account to another party. If you do not meet the foregoing eligibility requirements, you may not use the

Service or the Site.

## YOUR ACCOUNT

You represent and warrant that you are of legal age to form a binding contract and are not a person barred from receiving services under the laws of the United States or any other applicable jurisdiction. You also agree to provide true, accurate, current and complete information about yourself as prompted by the Site's registration form. If you provide any information that is untrue, inaccurate, not current or incomplete (or becomes untrue, inaccurate, not current or incomplete), or The RealReal has reasonable grounds to suspect that such information is untrue, inaccurate, not current or incomplete, The RealReal has the right to suspend or terminate your account and refuse any and all current or future use of the Site and Service (or any portion thereof). If you use the Site or Service, you are responsible for maintaining the confidentiality of your account and password, and for restricting access to your computer. You agree to accept responsibility for all activities that occur under your account or password. Because of this, we strongly recommend that you exit from your account at the end of each session. You agree to notify The RealReal immediately of any unauthorized use of your account or any other breach of security. The RealReal reserves the right to refuse service, terminate accounts, or remove or edit content in its sole discretion for any reason or no reason.

## SUBMITTED CONTENT

The Site and Service may provide you and other users with the ability to send messages or post content (together, "Postings") to or for other users and non-users. The RealReal is under no obligation to review any Postings and assumes no responsibility or liability relating to any such Postings. Notwithstanding the above, The RealReal may from time to time monitor the Postings on the Site or Service and may decline to accept and/or remove any Postings. You acknowledge that you are responsible for any Postings you may submit through the Site or Service, including the legality, reliability, appropriateness, originality and copyright of any such Postings. You may not upload to, distribute or otherwise publish through this Site any Posting that:

- i. is confidential, proprietary, invasive of privacy or publicity rights, infringing on intellectual property rights, unlawful, harmful, threatening, false, fraudulent, libelous, defamatory, obscene, vulgar, profane, abusive, harassing, hateful, racially, ethnically or otherwise objectionable, including, but not limited to any content that encourages conduct that would constitute a criminal offense, violates the rights of any party or otherwise gives rise to civil liability or otherwise violates any applicable U.S. or foreign laws;
- ii. may contain software viruses or malware;
- iii. contains advertisements or solicitations of any kind, or other commercial content;
- iv. is designed to impersonate others;
- v. contains personal information (such as messages that include phone numbers, Social Security numbers, payment card numbers, account numbers, addresses or employer references), except where we expressly ask you to provide such information;
- vi. contains messages by non-spokesperson employees of The RealReal purporting to speak on behalf of The RealReal or containing confidential information or expressing opinions concerning The RealReal;
- vii. contains messages that offer unauthorized downloads of any copyrighted, confidential or private information;
- viii. contains multiple messages placed within individual folders by the same user restating the same point;
- ix. contains chain letters of any kind; or
- x. contains identical (or substantially similar) messages to multiple recipients advertising any product or service, expressing a political or other similar message, or any other type of unsolicited commercial message; this prohibition includes but is not limited to (a) using the invitation functionality that may be available on the Site to send messages to people who do not know you or who are unlikely to recognize you as a known contact; (b) using the Site to connect to people who do not know you and then sending unsolicited promotional messages to those direct connections without their permission; or (c) sending messages to distribution lists, newsgroup aliases or group aliases.

With respect to any Postings you submit or make available through the Site or Service (other than personal information, which is handled in accordance with the Privacy Policy), you grant The RealReal a perpetual, irrevocable, non-terminable, worldwide, royalty-free, transferable and non-exclusive license, with the right to sublicense through multiple tiers, to use, copy, distribute, publicly display, modify, adapt, publish, create derivative works, and sublicense such Posting or any part of such Posting, in any format or medium now known or hereafter developed. You hereby represent, warrant and covenant that any Posting you provide (i)

does not include anything (including, but not limited to, text, images, music or video) to which you do not have the full right to grant such a license to The RealReal, and (ii) The RealReal's authorized use thereof, does not and will not infringe the rights of any third party (including, without limitation, intellectual property rights, rights of privacy or publicity, or any other legal or moral rights).

## AUTHENTICATION AND BRANDS

You acknowledge and agree that The RealReal's authentication process is in-house and independent. Brands identified on the Site are not involved in the authentication of the products being sold, and none of the brands sold assumes any responsibility for any products purchased from or through the website. Brands sold on the Site are not partnered or affiliated with The RealReal in any manner. However, The RealReal fully cooperates with brands seeking to track down the source of counterfeit items, which includes revealing the contact information of consignors submitting counterfeit goods. See [www.therealreal.com/authenticity](http://www.therealreal.com/authenticity).

## DISCLAIMER OF WARRANTY

ALL CONTENT, PRODUCTS, AND SERVICES ON THE SITE, OR AVAILABLE THROUGH THE SERVICE, OR OBTAINED FROM A WEBSITE TO WHICH THE SITE IS LINKED (A "LINKED SITE") ARE PROVIDED TO YOU "AS IS" WITHOUT WARRANTY OF ANY KIND EITHER EXPRESS OR IMPLIED INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT, SECURITY OR ACCURACY. THE REALREAL DOES NOT ENDORSE AND IS NOT RESPONSIBLE FOR (A) THE ACCURACY OR RELIABILITY OF ANY OPINION, ADVICE OR STATEMENT MADE THROUGH THE SITE OR SERVICE BY ANY PARTY, (B) ANY CONTENT PROVIDED ON LINKED SITES OR (C) THE CAPABILITIES OR RELIABILITY OF ANY PRODUCT OR SERVICE OBTAINED FROM A LINKED SITE. OTHER THAN AS REQUIRED UNDER APPLICABLE CONSUMER PROTECTION LAW, UNDER NO CIRCUMSTANCE WILL THE REALREAL BE LIABLE FOR ANY LOSS OR DAMAGE CAUSED BY A USER'S RELIANCE ON INFORMATION OBTAINED THROUGH THE SITE OR A LINKED SITE, OR USER'S RELIANCE ON ANY PRODUCT OR SERVICE OBTAINED FROM A LINKED SITE. IT IS THE RESPONSIBILITY OF THE USER TO EVALUATE THE ACCURACY, COMPLETENESS OR USEFULNESS OF ANY OPINION, ADVICE OR OTHER CONTENT AVAILABLE THROUGH THE SITE, OR OBTAINED FROM A LINKED SITE. PLEASE SEEK THE ADVICE OF PROFESSIONALS, AS APPROPRIATE, REGARDING THE EVALUATION OF ANY SPECIFIC OPINION, ADVICE, PRODUCT, SERVICE, OR OTHER CONTENT.

## LIMITATION OF LIABILITY

YOU EXPRESSLY UNDERSTAND AND AGREE THAT The RealReal AND ITS SUBSIDIARIES, AFFILIATES, OFFICERS, EMPLOYEES, AGENTS, PARTNERS AND LICENSORS SHALL NOT BE LIABLE TO YOU FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES, INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR LOSS OF PROFITS, GOODWILL, USE, DATA OR OTHER INTANGIBLE LOSSES (EVEN IF The RealReal HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES), RESULTING FROM USE OF THE SITE, CONTENT OR ANY RELATED SERVICES.

## INDEMNITY

11 SEP You will indemnify and hold harmless The RealReal from and against any and all fines, penalties, liabilities, losses and other damages of any kind whatsoever (including attorneys' and experts' fees), incurred by The RealReal and such parties, and shall defend The RealReal and such parties against any and all claims arising out of (1) your breach of these Terms and Use; (2) your breach of the Terms of Service; (4) fraud you commit, or your intentional misconduct or gross negligence; or (5) your violation of any applicable U.S. or foreign law or the rights of a third party. The RealReal will control the defense of any claim to which this indemnity may apply, and in any event, you shall not settle any claim without the prior written approval of The RealReal.

## FORCE MAJEURE

The RealReal shall be excused from performance under these TOS, to the extent it is prevented from or delayed from performing, in whole or in part, as a result of an event or series of events caused by or resulting from (1) weather conditions or other elements of nature or acts of God, (2) acts of war, acts of terrorism, insurrection, riots, civil disorders or rebellion, (3) quarantines or embargoes, (4) labor strikes, or (5) other causes beyond the reasonable control of The RealReal. In the event that The RealReal is temporarily unable to ship to you a purchased item because of such an event, The RealReal will give you the option of deferring shipment or receiving a refund of your charges.

## ELECTRONIC COMMUNICATION

When you use the Site, Service or send emails to The RealReal, you are communicating with The RealReal electronically. You consent to receive communications electronically from The RealReal and its Site Affiliates (as defined in the Privacy Policy). The RealReal will communicate with you by email or by posting notices on the Site. You agree that all agreements, notices, disclosures and other communications that are provided to you electronically satisfy any legal requirement that such communications be in writing.

## LINKS

The Site, Service or third parties may provide links to other websites or resources. Because The RealReal has no control over such sites and resources, you acknowledge and agree that The RealReal is not responsible for the availability of such external sites or resources, and does not endorse and is not responsible or liable for any content, advertising, products or other materials on or available from such websites or resources. You further acknowledge and agree that The RealReal shall not be responsible or liable, directly or indirectly, for any damage or loss caused or alleged to be caused by or in connection with use of or reliance on any such content, goods or services available on or through any such website or resource.

## MODIFICATION AND NOTIFICATION OF CHANGES

The RealReal reserves the right to make changes to the Service, Site, related policies and agreements, these TOS and the Privacy Policy at any time. If The RealReal makes a material modification to these TOS, it will notify you by: (i) sending an email to the address associated with your account. The RealReal is not responsible for your failure to receive an email due to the actions of your ISP or any email filtering service; therefore, you should add TheRealReal.com to the list of domains approved to send you email (commonly known as your "whitelist"); or (ii) displaying a prominent announcement above the text of these TOS or the Privacy Policy, as appropriate, for thirty (30) days, with (i) or (ii) being deemed sufficient notification, of such changes.

After notice of a modification to the TOS or the Privacy Policy has been posted for 30 days, the notice may be removed. If you choose to continue using the Site or Service, you agree that by doing so you will be deemed to accept the new TOS or Privacy Policy, as relevant.

## TRADEMARKS

The trademarks, logos and service marks ("Marks") displayed on the Site are the property of The RealReal and other parties. You are prohibited from using any Marks for any purpose including, but not limited to use as metatags on other pages or sites on the Internet without the written permission of The RealReal or such third party which may own the Marks. Information and content including any software programs available on or through the Service or Site ("Content") may be protected by copyright. Users are prohibited from modifying, copying, distributing, transmitting, displaying, publishing, selling, licensing, creating derivative works or using any Content available on or through the Site for any purpose.

## PROCEDURE FOR CLAIMS OF INTELLECTUAL PROPERTY INFRINGEMENT

The RealReal respects the intellectual property of others, and we ask our users to do the same. The RealReal may, in appropriate circumstances and at its discretion, disable and/or terminate the accounts of users who may be infringing the intellectual property of a third party. If you believe that your work has been copied in a way that constitutes copyright infringement, or your intellectual property rights have been otherwise violated, please provide The RealReal's Copyright Agent the following information:

- i. an electronic or physical signature of the person authorized to act on behalf of the owner of the copyright or other intellectual property interest;
- ii. a description of the copyrighted work or other intellectual property that you claim has been infringed;
- iii. a description of where the material that you claim is infringing is located on the Site;
- iv. your address, telephone number, and email address;
- v. a statement by you that you have a good faith belief that the disputed use is not authorized by the copyright owner, its agent, or the law;
- vi. a statement by you, made under penalty of perjury, that the above information in your notice is accurate and that you are the copyright or intellectual property owner or authorized to act on the

copyright or intellectual property owner's behalf.

The RealReal's agent for notice of claims of copyright or other intellectual property infringement can be reached as follows:

By mail:

Copyright Agent<sup>(SEP)</sup>  
c/o The RealReal<sup>(SEP)</sup>  
55 Francisco St. 6th floor  
San Francisco, CA 94133

By email: [contact@therealreal.com](mailto:contact@therealreal.com)

The RealReal may update these addresses from time to time.

## SURVIVAL OF TERMS AFTER AGREEMENT ENDS

Notwithstanding any other of this TOS, or any general legal principles to the contrary, any provision of this TOS that imposes or contemplates continuing obligations on a party will survive the expiration or termination of this TOS.

## GENERAL

If any of these conditions are deemed invalid, void, or for any unenforceable, the parties agree that the court should endeavor to give effect to the parties' intentions as reflected in the provision, and the unenforceable condition shall be deemed severable and shall not affect the validity and enforceability of any remaining condition. From time to time The RealReal may offer special promotional offers which may or may not apply to your The RealReal account. Headings are for reference purposes only and do not limit the scope or extent of such section. These TOS and the relationship between you and The RealReal will be governed by the laws of the State of California without regard to its conflict of law provisions. You and The RealReal agree to submit to the personal jurisdiction of the federal and state courts located in the County of San Francisco in the State of California with respect to any legal proceedings that may arise in connection with these TOS. The failure of The RealReal to act with respect to a breach by you or others does not waive its right to act with respect to subsequent or similar breaches. The RealReal does not guarantee it will take action against all breaches of these TOS. Except as otherwise expressly provided in these TOS, there shall be no third-party beneficiaries to these TOS. These TOS constitute the entire agreement between you and The RealReal and governs your use of the Site and Service (other than applicable Additional Terms), superseding any prior agreements between you and The RealReal with respect to the Site or Service.

## HOW TO CONTACT US

If you have any questions or comments about these TOS or this Site, please contact us by email at [contact@therealreal.com](mailto:contact@therealreal.com).

You also may write to us at:

The RealReal  
Attn: Legal Department<sup>(SEP)</sup>  
55 Francisco St. 6th floor  
San Francisco, CA 94133

## HISTORICAL MODIFICATIONS

*POSTED JUNE 01, 2011; UPDATED OCTOBER 27, 2013. THESE TOS WERE MODIFIED ON OCTOBER 27, 2013 TO REFLECT CHANGES THAT INCLUDE THE FOLLOWING: (I) CLARIFICATION THAT THE TOS APPLY TO THE SERVICE AVAILABLE THROUGH THE SITE, (II) REMOVE DUPLICATIVE AND OVERLAPPING PROVISIONS, (III) CLARIFY UNCLEAR PROVISIONS AND CORRECT SCRIVENER'S ERRORS, (IV) UPDATES TO THE REALREAL'S CONTACT INFORMATION, (V) REVISIONS TO YOUR OBLIGATIONS WITH RESPECT TO POSTINGS, (VII) ADDITION OF A PROVISION REGARDING ASPECTS OF THE LIMITATION OF LIABILITY AND (VI) THE JURISDICTION FOR DISPUTES.*

**FIRST LOOK MEMBER**

**CONSIGN WITH US**

**GIFT CARD**

**QUESTIONS?**

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Give the gift of luxury and style with a RealReal gift card.

Speak to one of our experts toll free: **(855) 435-5893**  
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[SIGN UP NOW](#)

[CONSIGN](#)

[PURCHASE](#)

[contact@TheRealReal.com](mailto:contact@TheRealReal.com)

**CUSTOMER CARE**

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- Returns
- Designer Directory
- Consignment
- FAQ
- Sustainability
- International Purchases

**COMPANY**

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- Consignor Affiliate Program
- Influencer Program
- Terms of Service
- Consignor Terms
- Privacy

**TOP FASHION BRANDS**

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- Van Cleef & Arpels
- Tiffany & Co
- Chanel Watches
- Rolex
- Bvlgari
- David Yurman
- Chopard
- Baume & Mercier
- Ippolita

**A SUSTAINABLE LUXURY COMPANY**

Honoring heritage brands and extending the lifecycle of luxury items.



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CIVIL COVER SHEET

The JS-CAND 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS GABY BASMADJIAN, INDIVIDUALLY AND OTHERS SIMILARLY SITUATED

DEFENDANTS The REALREAL, INC.,

(b) County of Residence of First Listed Plaintiff Oakland County, Michigan (EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant San Francisco (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

(c) Attorneys (Firm Name, Address, and Telephone Number)

Attorneys (If Known)

Keith L. Altman, SBN 257309
Excolo Law PLLC 26700 Lahser Road Ste. 401
Southfield, MI 48033 (516) 456-5885

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- 1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship: Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation.

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Large table with categories: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, HABEAS CORPUS, OTHER, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from Another District (specify)
6 Multidistrict Litigation-Transfer
8 Multidistrict Litigation-Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): Violation of 16 C.F.R. 23.17, Consumer Fraud, Unfair Business Practices, Unjust Enrichment, Negligent Misrepresentation, Breach of Express Warranty
Brief description of cause: Defendant systematically inflated gemstone weights of jewelry sold on their website unbeknownst to consumers.

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, Fed. R. Civ. P. DEMAND \$ >\$5,000,000.00 CHECK YES only if demanded in complaint: JURY DEMAND: X Yes No

VIII. RELATED CASE(S), IF ANY (See instructions):

JUDGE DOCKET NUMBER

IX. DIVISIONAL ASSIGNMENT (Civil Local Rule 3-2)

(Place an "X" in One Box Only) X SAN FRANCISCO/OAKLAND SAN JOSE EUREKA-MCKINLEYVILLE

DATE 12/04/2017

SIGNATURE OF ATTORNEY OF RECORD

/s/ Keith L. Altman



AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Northern District of California



Gaby Basmadjian, et al.,

Plaintiff(s)

v.

The RealReal, INC.,

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) The RealReal, Inc.,
55 San Francisco St., 6th Floor
San Francisco CA 94133

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Keith L. Altman, Excolo Law PLLC
26700 Lahser Road Ste. 401
Southfield, MI 48033

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date:

Signature of Clerk or Deputy Clerk

Civil Action No. \_\_\_\_\_

**PROOF OF SERVICE**

*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* \_\_\_\_\_  
was received by me on *(date)* \_\_\_\_\_.

I personally served the summons on the individual at *(place)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_; or

I left the summons at the individual's residence or usual place of abode with *(name)* \_\_\_\_\_  
\_\_\_\_\_, a person of suitable age and discretion who resides there,  
on *(date)* \_\_\_\_\_, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* \_\_\_\_\_, who is  
designated by law to accept service of process on behalf of *(name of organization)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_; or

I returned the summons unexecuted because \_\_\_\_\_; or

Other *(specify)*:

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_ 0.00 \_\_\_\_\_.

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc: