

REFINITIV

DELTA REPORT

10-Q

REAL - THEREALREAL, INC.

10-Q - JUNE 30, 2024 COMPARED TO 10-Q - MARCH 31, 2024

The following comparison report has been automatically generated

TOTAL DELTAS 1992

CHANGES	230
DELETIONS	1522
ADDITIONS	240

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC 20549

FORM 10-Q

(Mark One)

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

For the quarterly period ended **March 31, 2024** **June 30, 2024**

OR

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

For the transition period from ____ to ____
Commission File Number: 001-38953

The RealReal, Inc.

(Exact Name of Registrant as Specified in its Charter)

Delaware

45-1234222

(State or other jurisdiction of
incorporation or organization)

(I.R.S. Employer
Identification No.)

55 Francisco Street Suite 150
San Francisco, CA

94133

(Address of principal executive offices)

(Zip Code)

(855) 435-5893

(Registrant's telephone number, including area code)

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

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

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days.

Yes No

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

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

Large accelerated filer	<input type="checkbox"/>	Accelerated filer	<input checked="" type="checkbox"/>
Non-accelerated filer	<input type="checkbox"/>	Smaller reporting company	<input checked="" type="checkbox"/>
Emerging growth company	<input type="checkbox"/>		

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

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

As of **May 1, 2024** **August 1, 2024**, the registrant had **105,969,185** **108,498,205** shares of common stock, \$0.00001 par value per share, outstanding.

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NOTE REGARDING FORWARD-LOOKING STATEMENTS

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

In some cases, you can identify forward-looking statements by terms such as "may," "should," "expects," "plans," "anticipates," "could," "intends," "target," "projects," "contemplates," "believes," "estimates," "predicts," "potential" or "continue" or the negative of these terms or other similar expressions. The forward-looking statements in this Quarterly Report on Form 10-Q are only predictions. We have based these forward-looking statements largely on our current expectations and projections about future events and financial trends that we believe may affect our business, financial condition and results of operations. These forward-looking statements speak only as of the date of this Quarterly Report on Form 10-Q and are subject to a number of risks, uncertainties and assumptions described in the section titled "Risk Factors" included under Part II, Item 1A below and elsewhere in this Quarterly Report on Form 10-Q, as well as in our other filings with the Securities and Exchange Commission (SEC). Because forward-looking statements are inherently subject to risks and uncertainties, some

of which cannot be predicted or quantified, you should not rely on these forward-looking statements as predictions of future events. The events and circumstances reflected in our forward-looking statements may not be achieved or occur and actual results could differ materially from those projected in the forward-looking statements. Some of the key factors that could cause actual results to differ from our expectations include:

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

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- seasonal sales fluctuations;
- our ability to add capacity, capabilities and automation to our operations; and
- our ability to attract and retain key personnel.

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

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PART I—FINANCIAL INFORMATION

Item 1. Financial Statements

THE REALREAL, INC. Condensed Balance Sheets

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

	March 31, 2024	December 31, 2023
Assets		
Current assets		
Current assets		
Current assets		
Cash and cash equivalents		
Cash and cash equivalents		
Cash and cash equivalents		
Accounts receivable, net		
Inventory, net		
Prepaid expenses and other current assets		
Total current assets		
Property and equipment, net		
Operating lease right-of-use assets		
Restricted cash		
Other assets		
Total assets		
Liabilities and Stockholders' Deficit		
Current liabilities		
Current liabilities		
Current liabilities		
Accounts payable		
Accounts payable		
Accounts payable		
Accrued consignor payable		
Operating lease liabilities, current portion		
Convertible senior notes, net, current portion		
Other accrued and current liabilities		
Total current liabilities		
Operating lease liabilities, net of current portion		
Convertible senior notes, net		
Non-convertible notes, net		
Warrant liability		

Other noncurrent liabilities		
Total liabilities		
Commitments and contingencies (Note 11)	Commitments and contingencies (Note 11)	Commitments and contingencies (Note 11)
Stockholders' deficit:		
Common stock, \$0.00001 par value; 500,000,000 shares authorized as of March 31, 2024 and December 31, 2023; 105,917,789 and 104,670,500 shares issued and outstanding as of March 31, 2024 and December 31, 2023, respectively		
Common stock, \$0.00001 par value; 500,000,000 shares authorized as of March 31, 2024 and December 31, 2023; 105,917,789 and 104,670,500 shares issued and outstanding as of March 31, 2024 and December 31, 2023, respectively		
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Common stock, \$0.00001 par value; 500,000,000 shares authorized as of June 30, 2024 and December 31, 2023; 108,495,705 and 104,670,500 shares issued and outstanding as of June 30, 2024 and December 31, 2023, respectively		
Common stock, \$0.00001 par value; 500,000,000 shares authorized as of June 30, 2024 and December 31, 2023; 108,495,705 and 104,670,500 shares issued and outstanding as of June 30, 2024 and December 31, 2023, respectively		
Common stock, \$0.00001 par value; 500,000,000 shares authorized as of June 30, 2024 and December 31, 2023; 108,495,705 and 104,670,500 shares issued and outstanding as of June 30, 2024 and December 31, 2023, respectively		
Additional paid-in capital		
Accumulated deficit		
Accumulated deficit		
Accumulated deficit		
Total stockholders' deficit		
Total liabilities and stockholders' deficit		

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

THE REALREAL, INC. Condensed Statements of Operations <i>(In thousands, except share and per share data)</i> <i>(Unaudited)</i>			
Three Months Ended March 31,			
	Three Months Ended June 30,	Six Months Ended June 30,	
	2024	2024	2023
Revenue:			
Consignment revenue			
Consignment revenue			
Consignment revenue			
Direct revenue			
Shipping services revenue			
Total revenue			
Cost of revenue:			
Cost of consignment revenue			
Cost of consignment revenue			
Cost of consignment revenue			
Cost of direct revenue			



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

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

(In thousands, except share amounts)

(Unaudited)

Common Stock	Common Stock	Additional Paid-in Capital	Accumulated Deficit	Total Stockholders' Equity (Deficit)	Common Stock	Additional Paid-in Capital	Accumulated Deficit	Total Stockholders' Equity (Deficit)
Shares								

Balance as of December 31, 2023
Balance as of December 31, 2023
Balance as of December 31, 2023
Settlement of capped calls
Issuance of common stock upon exercise of options
Issuance of common stock upon vesting of restricted stock units, net of shares withheld for employee taxes
Stock-based compensation expense
Net loss
Balance as of March 31, 2024
Issuance of common stock upon exercise of options
Issuance of common stock upon vesting of restricted stock units, net of shares withheld for employee taxes
Issuance of common stock for exercises under ESPP
Stock-based compensation expense
Net loss
Balance as of June 30, 2024

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

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

(In thousands, except share amounts)
(Unaudited)

	Common Stock				Common Stock				Common Stock				Common Stock			
	Shares	Common Stock	Additional Paid-in Capital	Accumulated Deficit	Total Stockholders' Equity (Deficit)	Shares	Common Stock	Additional Paid-in Capital	Accumulated Deficit	Total Stockholders' Equity (Deficit)	Shares	Common Stock	Additional Paid-in Capital	Accumulated Deficit	Total Stockholders' Equity (Deficit)	
Balance as of December 31, 2022																
Balance as of December 31, 2022																
Balance as of December 31, 2022																
Issuance of common stock upon vesting of restricted stock units, net of shares withheld for employee taxes																
Issuance of common stock upon vesting of restricted stock units, net of shares withheld for employee taxes																
Issuance of common stock upon vesting of restricted stock units, net of shares withheld for employee taxes																
Stock-based compensation expense																
Net loss																
Balance as of March 31, 2023																
Issuance of common stock upon exercise of options																
Issuance of common stock upon vesting of restricted stock units, net of shares withheld for employee taxes																
Issuance of common stock for exercises under ESPP																
Stock-based compensation expense																
Net loss																
Balance as of June 30, 2023																

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

THE REALREAL, INC.
Condensed Statements of Cash Flows

(In thousands)
(Unaudited)

	Three Months Ended March 31,		Six Months Ended June 30,	
	2024	2024	2023	2024
Cash flows from operating activities:				
Net loss				
Net loss				
Net loss				
Adjustments to reconcile net loss to cash used in operating activities:				
Depreciation and amortization				
Depreciation and amortization				
Depreciation and amortization				
Stock-based compensation expense				
Reduction of operating lease right-of-use assets				
Bad debt expense				
Non-cash interest expense				
Issuance costs allocated to liability classified warrants				
Accretion of debt discounts and issuance costs				
Property, plant, equipment, and right-of-use asset impairments				
Property, plant, equipment, and right-of-use asset impairments				
Property, plant, equipment, and right-of-use asset impairments				
Provision for inventory write-downs and shrinkage				
Gain on debt extinguishment				
Change in fair value of warrant liability				
Loss related to warehouse fire, net				
Loss related to warehouse fire, net				
Loss related to warehouse fire, net				
Other adjustments				
Changes in operating assets and liabilities:				
Accounts receivable, net				
Accounts receivable, net				
Accounts receivable, net				
Inventory, net				
Prepaid expenses and other current assets				
Other assets				
Operating lease liability				
Accounts payable				
Accrued consignor payable				
Other accrued and current liabilities				
Other noncurrent liabilities				
Net cash used in operating activities				
Cash flow from investing activities:				
Capitalized proprietary software development costs				
Capitalized proprietary software development costs				

Capitalized proprietary software development costs	
Purchases of property and equipment	
Net cash used in investing activities	
Cash flow from financing activities:	
Proceeds from exercise of stock options	
Proceeds from exercise of stock options	
Proceeds from exercise of stock options	
Taxes paid related to restricted stock vesting	
Proceeds from issuance of stock in connection with the Employee Stock Purchase Program	
Cash received from settlement of capped calls in conjunction with the Note Exchange	
Issuance costs paid related to the Note Exchange	
Net cash used in financing activities	
Net cash (used in) provided by financing activities	
Net decrease in cash, cash equivalents and restricted cash	
Cash, cash equivalents and restricted cash	
Beginning of period	
Beginning of period	
Beginning of period	
End of period	

THE REALREAL, INC.
Condensed Statements of Cash Flows

(In thousands)
(Unaudited)

Three Months Ended March 31,	Six Months Ended June 30,
2024	2024
2023	2024
2023	2023

Supplemental disclosures of cash flow information	
Cash paid for interest	
Cash paid for interest	
Cash paid for interest	
Cash paid for income taxes	
Supplemental disclosures of non-cash investing and financing activities	
Property and equipment additions not yet paid in cash	
Property and equipment additions not yet paid in cash	
Property and equipment additions not yet paid in cash	
Capitalized proprietary software development costs additions not yet paid in cash	
Stock-based compensation capitalized to proprietary software development costs	
Liability classified warrants issued in connection with the Note Exchange	
Net decrease in principal amount of debt due to the Note Exchange	
Issuance costs associated with the Note Exchange included in accounts payable and other accrued and current liabilities	

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

THE REALREAL, INC.
Notes to Unaudited Condensed Financial Statements

Note 1. Description of Business and Basis of Presentation

Organization and Description of Business

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

Basis of Presentation

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

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

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

Note 2. Summary of Significant Accounting Policies

Use of Estimates

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

Net Loss per Share Attributable to Common Stockholders

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

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

Basic net loss per share attributable to common stockholders is calculated by dividing the net loss for the period by the weighted-average number of shares of common stock outstanding during the period.

Diluted net loss per share is computed by giving effect to all potentially dilutive securities outstanding for the period using the treasury stock method or the if-converted method based on the nature of such securities. **For periods** See Note 13 – Net Loss Per Share Attributable to Common Stockholders for the **reconciliation of the numerator and denominator used** in which the Company reports net losses, calculation of the basic and diluted net loss per common share attributable to common stockholders is the same as basic net loss per common share attributable to common stockholders, because potentially dilutive common shares are not assumed to have been issued if their effect is anti-dilutive.

Revenue Recognition

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

Consignment Revenue

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

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

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

The Company also generates subscription revenue from monthly memberships allowing buyers early access to shop for luxury goods. The buyers receive the early access and other benefits over the term of the subscription period, which represents a single stand-ready performance obligation. Therefore, the subscription fees paid by the buyer are recognized over the monthly subscription period. Subscription revenue was not material in the three **and six** months ended **March 31, 2024** **June 30, 2024** and 2023.

Direct Revenue

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

Shipping Services Revenue

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

Incentives

Incentives, which include platform-wide discounts and buyer incentives, may periodically be offered to buyers. Platform-wide discounts are made available to all buyers on the online marketplace. Buyer incentives apply to specific buyers and consist of coupons or promotions that offer credits in connection with purchases on the Company's platform, and do not impact the commissions paid to consignors. These are treated as a reduction of consignment revenue and direct revenue. Additionally, the Company periodically offers commission exceptions to the standard consignment rates to consignors to optimize its supply. These are

treated as a reduction of consignment revenue at the time of sale. The Company may offer a certain type of buyer incentive in the form of site credits to buyers on current transactions to be applied towards future transactions, which are included in other accrued and current liabilities on the condensed balance sheets.

Contract Liabilities

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

Cost of Revenue

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

Stock-based Compensation

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

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

Cash, Cash Equivalents and Restricted Cash

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

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

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

	March 31, 2024	December 31, 2023	March 31, 2023
	June 30, 2024	December 31, 2023	June 30, 2023
Cash and cash equivalents			
Restricted cash			
Total cash, cash equivalents and restricted cash			

Inventory, Net

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

provisions for inventory shrinkage were \$1.1 million \$1.8 million and \$3.4 million \$6.5 million during the three six months ended March 31, 2024 June 30, 2024 and 2023, respectively.

Return reserves, which reduce revenue and cost of sales, are estimated using historical experience. Liabilities for return allowances are included in other accrued and current liabilities on the condensed balance sheets and were \$22.9 million \$20.8 million and \$22.2 million as of March 31, 2024 June 30, 2024 and December 31, 2023, respectively. Included in inventory on the Company's condensed balance sheets are assets totaling \$3.6 million \$4.0 million and \$5.2 million as of March 31, 2024 June 30, 2024 and December 31, 2023, respectively, for the rights to recover products from customers associated with its liabilities for return reserves.

Software Development Costs

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

Impairment of Long-lived Assets

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

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

Leases

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

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

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

Debt

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

Capped Call Transactions

In June 2020 and March 2021, in connection with the issuance of its convertible senior notes, the Company entered into the capped call transactions (see Note 7). The capped call transactions are expected generally to reduce the potential dilution to the holders of the Company's common stock upon any conversion of the convertible senior notes and/or offset any cash payments the Company is required to make in excess of the principal amount of converted convertible senior

notes, with such reduction and/or offset subject to a cap based on the cap price. The Capped Calls (as defined below) are classified in stockholders' equity as a reduction to additional paid-in capital and are not subsequently remeasured as long as the conditions for equity classification continue to be met. The Company monitors the conditions for equity classification, which continue to be met.

Concentrations of Credit Risks

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

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

Recently Adopted Accounting Pronouncements

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

Note 3. Cash and Cash Equivalents

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

	March 31, 2024				June 30, 2024			
	Amortized Cost	Amortized Cost	Unrealized Gain	Unrealized Loss	Fair Value	Amortized Cost	Unrealized Gain	Unrealized Loss
Cash and cash equivalents:								
Cash								
Cash								
Cash								
Money market funds								
Total cash and cash equivalents								
December 31, 2023								
Cash and cash equivalents:								
Cash	\$ 50,947		\$ —	\$ —	\$ 50,947			
Money market funds		124,762		—		—	124,762	
Total cash and cash equivalents	\$ 175,709		\$ —	\$ —	\$ 175,709			

Note 4. Fair Value Measurement

Assets and liabilities recorded at fair value on a recurring basis on the condensed balance sheets are categorized based upon the level of judgment associated with the inputs used to measure their fair values. Fair value is defined as the exchange price that would be received for an asset or an exit price that would be paid to transfer a liability in the principal or most advantageous market for the asset or liability in an orderly transaction between market participants on

the measurement date. Valuation techniques used to measure fair value must maximize the use of observable inputs and minimize the use of unobservable inputs. The authoritative guidance on fair value measurements establishes a three-tier fair value hierarchy for disclosure of fair value measurements as follows:

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

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

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

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

Assets and Liabilities Measured at Fair Value on a Recurring Basis

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

		March 31, 2024
		March 31, 2024
		March 31, 2024
		June 30, 2024
		June 30, 2024
		June 30, 2024
		Level 1
		Level 1
		Level 1
Financial assets:		
Financial assets:		
Financial assets:		
Money market funds		
Money market funds		
Money market funds		
Total		
Total		
Total		
Financial liabilities:		
Financial liabilities:		
Financial liabilities:		
Warrants		
Warrants		
Warrants		
Total		
Total		
Total		

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

Fair Value Measurements of Other Financial Instruments

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

	December 31, March 31, 2024	2023
--	--------------------------------	------

	December 31,				June 30, 2024				
	Net Carrying Amount	Net Carrying Amount	Estimated Fair Value						
2025 Convertible senior notes									
2028 Convertible senior notes									

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

As of March 31, 2024 June 30, 2024, the fair value of the 2025 Notes and the 2028 Notes, which differs from their carrying value is determined based on the quoted bid prices of the Convertible Senior Notes in an over-the-counter over-the-counter market using the latest trading information of the reporting period.

Fair Value Measurement of Warrants

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

The aggregate fair value of the Warrants upon issuance and as of March 31, 2024 June 30, 2024 was \$10.4 million and \$26.0 million \$20.4 million, respectively, determined using a Black-Scholes Model with the following inputs:

	On issuance	On issuance	March 31, 2024	On issuance	June 30, 2024
Stock price	Stock price	\$1.77	\$3.91	Stock price	\$1.77
Exercise price	Exercise price	\$1.71	\$1.71	Exercise price	\$1.71
Expected life in years	Expected life in years	5.00	4.92	Expected life in years	5.00
Expected volatility	Expected volatility	94.84 %	97.15 %	Expected volatility	94.84 %
Expected dividends	Expected dividends	— %	— %	Expected dividends	— %
Discount rate	Discount rate	4.26 %	4.21 %	Discount rate	4.26 %

The following table presents the activity related to the Warrants during the three and six months ended March 31, 2024 June 30, 2024.

Opening balance	\$	—
Issuance of warrants		10,417
Change in fair value		15,583
Ending balance	\$	26,000

	Three Months Ended June 30, 2024	Six Months Ended June 30, 2024
Opening balance	\$ 26,000	\$ —
Issuance of warrants	—	10,417
Change in fair value	(5,630)	9,953
Balance as of June 30, 2024	\$ 20,370	\$ 20,370

Note 5. Condensed Balance Sheet Components

Property and Equipment, Net

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

	March 31, 2024	December 31, 2023
	June 30, 2024	December 31, 2023
Proprietary software		
Furniture and equipment		
Automobiles		
Leasehold improvements		
Property and equipment, gross		
Less: accumulated depreciation and amortization		
Property and equipment, net		

Depreciation and amortization expense on property and equipment was **\$8.2 million** **\$8.1 million** and **\$7.5 million** **\$7.8 million** for the three months ended **March 31, 2024** **June 30, 2024** and 2023, respectively, and \$16.3 million and \$15.3 million for the six months ended **June 30, 2024** and 2023, respectively.

During the **three** **six** months ended **March 31, 2023** **June 30, 2023**, the Company recorded \$7.2 million of impairment of leasehold improvements and disposal of fixed assets, related to the closures of several of its office and retail locations as part of the savings plan the Company implemented. The Company did not record impairment of leasehold improvements or disposal of fixed assets related to the savings plan during the **three** **and six** months ended **March 31, 2024** **June 30, 2024**.

Other Accrued and Current Liabilities

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

	March 31, 2024	December 31, 2023
	June 30, 2024	December 31, 2023
Returns reserve		
Accrued compensation		
Accrued sales tax and other taxes		
Site credit and gift card liability		
Accrued marketing and outside services		
Accrued shipping		
Deferred revenue		
Accrued interest		
Other		
Other accrued and current liabilities		

Note 6. Non-convertible Notes, Net

Note Exchange

On February 29, 2024 (the "Closing Date"), the Company entered into exchange agreements with certain holders (the "Exchange Holders") of its 2025 Notes and 2028 Notes to exchange (i) \$145.8 million in aggregate principal amount of the 2025 Notes and (ii) \$6.5 million in aggregate principal amount of the 2028 Notes (together, the "Exchanged Notes") for

\$135.0 **\$135.0** million in aggregate principal amount of the Company's 4.25%/8.75% PIK/Cash Senior Secured Notes due 2029 (the "2029 Notes"), pursuant to an indenture (the "Note Exchange"). The 2029 Notes bear interest at a rate of 13.00% per annum, consisting of cash interest at a rate of 8.75% per annum payable semi-annually in arrears and payment in-kind ("PIK") interest at a rate of 4.25% per annum payable semi-annually. During the **three** **six** months ended **March 31, 2024** **June 30, 2024**, there were no amounts added to the principal amounts outstanding due to accrued PIK interest. The 2029 Notes will mature on the earlier of (a) March 1, 2029 and (b) any date, if any, on or after December 1, 2027 on which (a) the aggregate principal amount of the 2028 Notes then outstanding is greater than \$20 million and (b) the difference between (i) the amount of unrestricted cash and cash equivalents held by the Company and its subsidiaries (if any) as of such date of determination and (ii) the aggregate principal amount of 2028 Notes outstanding as of such date of determination is less than \$75 million. In connection with the Note Exchange, the Company issued the Warrants (see Note 4 – Fair Value Measurement for further details on the terms of the Warrants).

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

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

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

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

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

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

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

Fiscal Year	Fiscal Year	Amount	
		2029 Notes	Fiscal Year
2024 through 2028			2029 Notes
2029			
2029			
2029			

Total expected payments at maturity
Less unamortized debt issuance costs and debt premium, net
Less amounts related to PIK interest
Net carrying amount

Note 7. Convertible Senior Notes, Net

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

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

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

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

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

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

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

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

On and after March 15, 2025, in the case of the 2025 Notes, and December 1, 2027, in the case of the 2028 Notes, until the close of business on the scheduled trading day immediately preceding the maturity date, holders may convert all or a portion of their Convertible Senior Notes, in multiples of \$1,000 principal amount, at any time, regardless of the foregoing circumstances. Upon conversion, the Convertible Senior Notes will be settled, at the Company's election, in cash, shares of the Company's common stock, or a combination of cash and shares of the Company's common stock. It is the Company's current intent to settle conversions of the 2025 Notes and the 2028 Notes through combination settlement, which involves repayment of the principal portion in cash and any excess of the conversion value over the principal amount in shares of its common stock. The conditions allowing holders of either the 2025 Notes or the 2028 Notes to convert were not met as of [March 31, 2024](#) [June 30, 2024](#).

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

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

The carrying amount of the 2025 Notes is \$26.5 million as of **March 31, June 30, 2024**, with principal of \$26.7 million, net of unamortized issuance costs of **\$0.3** \$0.2 million. The 2025 Notes were classified as **long** short term liabilities as of **March 31, 2024** **June 30, 2024**. The issuance costs related to the 2025 Notes are being amortized to interest expense over the expected life of the 2025 Notes or approximately its five-year term at an effective interest rate of 3.74%. The carrying amount of the 2028 Notes is **\$275.8** \$276.2 million as of **March 31, June 30, 2024**, with principal of \$281.0 million, net of unamortized issuance costs of **\$5.2** \$4.9 million. The 2028 Notes were classified as long term liabilities as of **March 31, June 30, 2024**. The issuance costs related to the 2028 Notes are being amortized to interest expense over the expected life of the 2028 Notes or approximately its seven-year term at an effective interest rate of 1.45%.

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

	Three Months Ended March 31,		Three Months Ended June 30,		Six Months Ended June 30,	
	2024	2023	2024	2023	2024	2023
Contractual interest expense						
Amortization of debt issuance costs						
Total interest and amortization expense						

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

	Three Months Ended March 31,		Three Months Ended June 30,		Six Months Ended June 30,	
	2024	2023	2024	2023	2024	2023
Contractual interest expense						
Amortization of debt issuance costs						
Total interest and amortization expense						

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

Fiscal Year	Fiscal Year	2025 Notes	2028 Notes	Amount	
				Fiscal Year	2025 Notes
2024					2028 Notes
2025					
2026					
2027					
2028					
Total principal payments					

Less unamortized debt issuance costs
Net carrying amount

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

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

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

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

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

Note 8. Share-based Compensation Plans

2019 Equity Incentive Plan

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

The Company's board of directors approved an increase of shares available for grant under the 2019 Plan by 4,648,003 shares on February 23, 2022, by 4,954,409 shares on February 13, 2023, and by 5,233,525 on February 20, 2024.

In February 2022, the Company granted PSUs with financial performance targets to certain employees of the Company. The number of units issued will depend on the achievement of financial metrics relative to the approved performance targets, and can range from 0% to 150% of the target amount. The PSUs are subject to continuous service with the Company and will vest after approximately three years. The PSUs are measured using the fair value at the date of grant. The compensation expense associated with PSUs is recognized based on the estimated number of shares that the Company expects will vest and may be adjusted based on interim estimates of performance against the performance condition. During the three and six months ended **March 31, 2024** **June 30, 2024**, the Company has not recorded stock-based compensation expense as attainment of the financial performance targets is not considered probable.

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

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

As of **March 31, 2024** **June 30, 2024**, there was **\$40.1 million** of total unrecognized compensation expense of approximately **\$49.0 million** related to RSUs and PSUs, which are expected to be recognized over the remaining weighted-average vesting period of approximately **2.4** **2.3** years. As of **March 31, 2024** **June 30, 2024**, there was no unrecognized compensation expense related to options.

Inducement Grants

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

The inducement pool consists of a total of **4,375,000** **5,625,000** shares of the Company's common stock, which includes (a) **1,500,000** **2,050,000** shares of PSUs that are eligible to vest based on market and service conditions in four tranches over a five-year performance period and (b) **2,875,000** **3,575,000** shares of RSUs generally subject to the same terms and conditions as grants that are made under the 2019 Plan. As of **March 31, 2024** **June 30, 2024**, the unrecognized expense for the PSUs is **\$1.1 million** **\$2.7 million** and the unrecognized expense for RSUs is **\$5.9 million** **\$8.2 million**.

Employee Stock Purchase Plan

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

There were **no** **333,753** and **469,199** shares purchased by employees under the ESPP during the three and six months ended **March 31, 2024** **June 30, 2024** and **2023**, **2023**, respectively. As of **March 31, 2024** **June 30, 2024**, total unrecognized compensation costs related to the purchase rights under the ESPP was immaterial.

Stock-based Compensation

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

	Three Months Ended March 31,	Three Months Ended March 31,	Three Months Ended March 31,	Three Months Ended June 30,	Three Months Ended June 30,	Three Months Ended June 30,	2024	2024	2024
Marketing									
Marketing									
Marketing									
Operations and technology									
Operations and technology									
Operations and technology									
Selling, general and administrative									
Selling, general and administrative									

Marketing
Marketing
Marketing
Operations and technology
Operations and technology
Operations and technology
Selling, general and administrative
Selling, general and administrative

Selling, general and administrative

Total

Total

Total

During the three months ended **March 31, 2024** **June 30, 2024** and 2023, the Company capitalized \$0.1 million and \$0.3 million, \$0.2 million of stock-based compensation expense to proprietary software, respectively. During the six months ended **June 30, 2024** and 2023, the Company capitalized \$0.3 million and \$0.4 million of stock-based compensation expense to proprietary software, respectively.

Note 9. Leases

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

The Company recorded operating lease costs of **\$5.1 million** \$5.3 million and **\$7.1 million** \$5.6 million for the three months ended **March 31, 2024** **June 30, 2024** and 2023, respectively, and \$10.4 million and \$12.8 million for the six months ended **June 30, 2024** and 2023, respectively. The Company also incurred **\$1.5 million** \$1.4 million and \$1.3 million of variable lease costs for the three months ended **March 31, 2024** **June 30, 2024** and 2023, respectively, and \$2.9 million and \$2.6 million of variable lease costs for the six months ended **June 30, 2024** and 2023, respectively. The variable lease costs are comprised primarily of the Company's proportionate share of operating expenses, property taxes and insurance.

Due to the office and store closures in the **three six** months ended **March 31, 2023** **June 30, 2023**, the Company reviewed its right-of-use assets for impairment. Impairment losses are measured and recorded for the excess of carrying value over its fair value, estimated based on expected future cash flows using discount rate and other quantitative and qualitative factors. As a result, the Company recorded **\$25.7 million** \$26.3 million related to the impairment of certain office and store right-of-use **assets**, assets, for the six months ended **June 30, 2023**. No impairment charges were recorded during the six months ended **June 30, 2024**. The impairment charges are included in restructuring charges in the condensed statements of operations.

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

Fiscal Year	Fiscal Year	Amount	Fiscal Year	Amount
Remainder of 2024				
2025				
2026				
2027				
2028				
Thereafter				
Total future minimum payments				
Less: Imputed interest				
Present value of operating lease liabilities				

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

	Three Months				
	Ended March 31,				
	2024	2024	2023	2024	2023
Operating cash flows used for operating leases					

Operating lease assets obtained in exchange for operating lease liabilities (including remeasurement of right-of-use assets and lease liabilities due to lease modifications)

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

	March 31, June 30, 2024
Weighted average remaining lease term	5.350 years
Weighted average discount rate	6.162 %

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

Note 10. Restructuring

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

For the **three six** months ended **March 31, 2023** **June 30, 2023**, the Company recognized **\$36.4** **\$38.3** million in restructuring charges which consisted of right-of-use asset impairment charge of **\$25.7** **\$26.3** million, leasehold improvements impairment charge of \$7.2 million, employee severance of **\$1.7** **\$3.0** million, and other related charges of \$1.8 million. The Company recorded an immaterial amount of restructuring charges for the **three six** months ended **March 31, 2024** **June 30, 2024**. The restructuring related charges were recorded on a separate line item in the Company's condensed statement of operations.

Note 11. Commitments and Contingencies

Fire at Secaucus, New Jersey Authentication Center

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

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

The Company recorded an initial insurance receivable of \$3.1 million, reported within prepaid and other current assets in the condensed balance sheet and related insurance recovery gain within Operations and Technology on the condensed statement of operations, partially offsetting applicable losses related to the fire. During the period ended June 30, 2024, the Company recorded a net loss of \$0.4 million related to the fire.

As of June 30, 2024, the Company had received, in aggregate, advance payments from insurers totaling approximately \$0.8 million towards its claims to cover immediate impacts of the fire which is included in net cash flows from operating activities in the condensed statements of cash flows.

Noncancelable Purchase Commitments

The Company has commitments for cloud services and other services in the ordinary course of business with varying expiration terms through 2027. As of **March 31, 2024** **June 30, 2024**, there were no material changes to the Company's noncancelable purchase commitments disclosed in the financial statements in the Annual Report on Form 10-K.

Contingencies

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

On November 14, 2018, Chanel, Inc. sued the Company in the U.S. District Court for the Southern District of New York. The Complaint alleged federal and state law claims of trademark infringement, unfair competition, and false advertising. On February 1, 2019, Chanel, Inc. filed its First Amended Complaint that included substantially similar claims against the Company. On March 4, 2019, the Company filed a Motion to Dismiss the First Amended Complaint, which was granted in part and dismissed in part on March 30, 2020. The surviving claims against the Company include trademark infringement under 15 U.S.C. § 1114, false advertising under 15 U.S.C. § 1125, and unfair competition under New York common law. On May 29, 2020, the Company filed its Answer to the Amended Complaint. On November 3, 2020, the Company sought leave to amend its Answer to assert counterclaims against Chanel, Inc. for violations of the Sherman Act, 15 U.S.C. §§ 1 & 2, the Donnelly Act, N.Y. Gen. Bus. Law. § 340, and New York common law. The motion for leave to amend was granted on February 24, 2021. On February 25, 2021, the Company filed its First Amended Answer, Affirmative Defenses and Counterclaims against Chanel. The Company's Counterclaims allege violations of the Sherman Act, 15 U.S.C. §§ 1 & 2, the Donnelly Act, N.Y. Gen. Bus. Law. § 340, and New York common law. On March 18, 2021, Chanel moved to dismiss the Company's Counterclaims and moved to strike the Company's unclean hands affirmative defense. Decisions on Chanel's motion to dismiss and motion strike are pending. The parties agreed to a stay in April 2021 to engage in settlement discussions. After several mediation sessions, the parties were unable to reach a resolution, and the stay was lifted in November 2021. Chanel then sought a partial stay of discovery on the Company's counterclaims and

unclean hands defense while Chanel's motion to dismiss and strike those claims are pending, and on March 10, 2022, the Court granted Chanel's request. Since then, the parties have continued to engage in fact discovery regarding Chanel's counterfeiting and false advertising claims against the Company. Fact discovery was scheduled to be completed by August 15, 2023, however, on July 19, 2023, the Court ordered a stay of the case at the parties' request to enable the parties to attempt mediation again. The mediation scheduled to begin on October 24, 2023 was postponed, and the parties are working to reschedule it in 2024. The final outcome of this litigation, including our liability, if any, with respect to Chanel's claims, is uncertain. An unfavorable outcome in this or similar litigation could adversely affect the Company's business and could lead to other similar lawsuits. The Company is not able to predict or reasonably estimate the ultimate outcome or possible losses relating to this claim.

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

Indemnifications

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

Note 12. Income Taxes

The Company's provision for income taxes were immaterial for the three and six months ended March 31, 2024 June 30, 2024 and 2023.

The Company maintained a full valuation allowance of \$292.3 million against its gross deferred tax assets which were \$319.4 million as of March 31, 2024 June 30, 2024. The deferred tax assets were primarily comprised of federal and state tax net operating loss carryforwards. Utilization of the net operating loss carryforwards may be subject to annual limitation due to historical or future ownership percentage change rules provided by the Internal Revenue Code of 1986, and similar state provisions. The annual limitation may result in the expiration of certain net operating loss carryforwards before their utilization.

As of March 31, 2024 June 30, 2024, the Company had unrecognized tax benefits under ASC 740 Income Taxes of \$2.8 million, \$2.9 million and no applicable interest. There were no unrecognized tax benefits that, if recognized, would affect the Company's effective tax rate as of March 31, 2024 June 30, 2024. The Company's policy is to account for interest and penalties related to uncertain tax positions as a component of income tax provision. The Company does not anticipate that the amount of unrecognized tax benefits will significantly increase or decrease within the next twelve months. Due to historical losses, all years are open to examination and adjustment by the taxing authorities.

Note 13. Net Loss Per Share Attributable to Common Stockholders

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

	Three Months Ended March 31,	
	2024	2023
Numerator		
Net loss attributable to common stockholders	\$ (31,101)	\$ (82,500)
Denominator		

Weighted-average common shares outstanding used to calculate net loss per share attributable to common stockholders, basic and diluted		105,212,053	99,608,071
Net loss per share attributable to common stockholders, basic and diluted		\$ (0.30)	\$ (0.83)

	Three Months Ended June 30,		Six Months Ended June 30,	
	2024	2023	2024	2023
Numerator				
Net loss attributable to common stockholders, basic	\$ (16,708)	\$ (41,330)	\$ (47,809)	\$ (123,830)
Gain from change in fair value of warrants	(5,630)	—	—	—
Net loss attributable to common stockholders, diluted	\$ (22,338)	\$ (41,330)	\$ (47,809)	\$ (123,830)
Denominator				
Weighted-average common shares outstanding used to calculate net loss per share attributable to common stockholders, basic	106,882,054	100,973,105	106,047,054	100,294,359
Effect of dilutive liability classified warrants	4,235,335	—	—	—
Weighted-average common shares outstanding used to calculate net loss per share attributable to common stockholders, diluted	111,117,389	100,973,105	106,047,054	100,294,359
Net loss per share attributable to common stockholders:				
Basic	\$ (0.16)	\$ (0.41)	\$ (0.45)	\$ (1.23)
Diluted	\$ (0.20)	\$ (0.41)	\$ (0.45)	\$ (1.23)

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

	March 31,			
	Three Months Ended June 30,		Six Months Ended June 30,	
	2024	2023	2024	2023
Options to purchase common stock				
Restricted stock units				
Estimated shares issuable under the Employee Stock Purchase Plan				
Assumed conversion of the Convertible Senior Notes				
Warrants to purchase common stock				
Total				

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

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

Overview

We are the world's largest online marketplace for authenticated resale luxury goods. We are revolutionizing luxury resale by providing an end-to-end service that unlocks supply from consignors and creates a trusted, curated online marketplace for buyers globally. Since our inception in 2011, we have cultivated a loyal and engaged consignor and buyer base through our investments in our technology platform, logistics infrastructure and people. We offer a wide selection of

authenticated, primarily pre-owned luxury goods on our online marketplace bearing the brands of thousands of luxury and premium designers. We offer products across multiple categories including women's and men's fashion, fine jewelry and watches. We have built a vibrant online marketplace that we believe expands the overall luxury market, promotes the recirculation of luxury goods and contributes to a more sustainable world.

We have transformed the luxury consignment experience by removing the friction and pain points inherent in the traditional consignment model. For consignors, we offer concierge at-home consultation and pickup as well as virtual consultations via online face-to-face platforms. Consignors may also drop off items at our luxury consignment offices. Our Neighborhood and Flagship Stores provide an alternative location to drop off consigned items and an opportunity to interact with our authentication experts. Consignors may also utilize our complimentary shipping directly to our authentication centers. We leverage our proprietary transactional database and market insights from approximately 39.2 40.9 million item sales since our inception to deliver optimal pricing and rapid sell-through. For buyers, we offer highly coveted and exclusive authenticated pre-owned luxury goods at attractive values, as well as a high-quality experience befitting the products we offer. Our online marketplace is powered by our proprietary technology platform, including consumer facing applications and purpose-built software that supports our complex, single-SKU inventory management system.

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

- **Consignment revenue.** When we sell goods through our online marketplace or retail stores on behalf of our consignors, we retain a percentage of the proceeds, which we refer to as our take rate. Take rates vary depending on the total value of goods sold through our online marketplace on behalf of a particular consignor as well as the category and price point of the items. In the three months ended March 31, 2024 June 30, 2024 and 2023, our overall take rate on consigned goods was 38.4% 38.5% and 37.4% 36.7%, respectively. The increase in our take rate was due to the update of our consignor commission structure (effective November 1, 2022). Additionally, we earn revenue from our subscription program, *First Look*, in which we offer buyers early access to the items we sell in exchange for a monthly fee.
- **Direct revenue.** When we accept out of policy returns from buyers, or when we make direct purchases from businesses and consignors, we take ownership of goods and retain 100% of the proceeds when the goods subsequently sell through our online marketplace or retail stores.
- **Shipping services revenue.** When we deliver purchased items to our buyers, we charge shipping fees to buyers for the outbound shipping and handling services. We also generate shipping services revenue from the shipping fees for consigned products returned by our buyers to us within policy. Shipping services revenue excludes the effect of buyer incentives and sales tax.

We generate revenue from orders processed through our website, mobile app and retail stores. Our omni-channel experience enables buyers to purchase anytime and anywhere. We have a global base of more than 36.2 37.0 million members as of March 31, 2024 June 30, 2024. We count as a member any user who has registered an email address on our website or downloaded our mobile app, thereby agreeing to our terms of service.

Through March 31, 2024 June 30, 2024, we have cumulatively paid more than \$4.2 billion \$4.4 billion in commissions to our consignors. In the three months ended March 31, 2024, our Our gross merchandise value ("GMV" ("GMV")) increased by 2% 4% to \$451.9 million compared to \$444.4 million \$440.9 million from \$423.3 million in the three months ended March 31, 2023. June 30, 2024 and 2023, respectively. Our GMV increased by 3% to \$892.9 million from \$867.7 million in the six months ended June 30, 2024 and 2023, respectively. Additionally, our net merchandise value ("NMV" ("NMV")) increased by 2% 8% to \$334.8 million \$329.4 million from \$327.8 million \$303.9 million in the three months ended March 31, 2024 June 30, 2024 and 2023, due respectively, and by 5% to GMV growth, \$664.2 million from \$631.7 million in the six months ended June 30, 2024 and 2023, respectively. Our total revenue increased by 1% 11% to \$143.8 million \$144.9 million from \$141.9 million \$130.9 million in the three months ended March 31, 2024 June 30, 2024 and 2023, respectively, and increased by 6% to \$288.7 million from \$272.8 million in the six months ended June 30, 2024 and 2023, respectively. In the three months ended March 31, 2024 June 30, 2024 and 2023, our gross profit was \$107.3 million \$107.5 million and \$90.0 million \$86.2 million, respectively, representing an increase of 19% 25%. In the six months ended June 30, 2024 and 2023, our gross profit was \$214.7 million and \$176.2 million, respectively, representing an increase of 22%.

Factors Affecting Our Performance

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

Consignors and Buyers

Consignor growth and retention. We grow our sales by increasing the supply of luxury goods offered through our consignment online marketplace. We grow our supply both by attracting new consignors and by creating lasting engagement with existing consignors. We generate leads for new consignors principally through our advertising activity. We convert those leads into active consignors through the activities of our sales professionals, who are trained and incentivized to identify and source high-quality, coveted luxury goods from consignors. Our sales professionals form a consultative relationship with consignors and deliver a high-quality, rapid consigning experience. Our existing relationships with consignors allow us to unlock valuable supply across multiple categories, including women's fashion, men's fashion, jewelry and watches. Using artificial intelligence to assist our pricing team, we leverage our proprietary transactional database and market insights based on more than 39.2 40.9 million item sales since inception to deliver consignors optimal pricing and rapid sell-through.

Our growth has been driven in significant part by repeat sales by existing consignors concurrent with growth of our consignor base. The percentage of GMV from repeat consignors in the three months ended **March 31, 2024** **June 30, 2024** was 85% as compared to **82%** **84%** for the three months ended **March 31, 2023** **June 30, 2023**.

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

We believe there is substantial opportunity to grow our business by having buyers also become consignors and vice versa. As of **March 31, 2024** **June 30, 2024**, 15% of our buyers during the last twelve months had become consignors at any point in that time, and 48% of our consignors had become buyers during the last twelve months had become buyers at any point in that time. We believe our updated method of measuring buyers who have become consignors and vice versa more accurately reflects the flywheel that enhances the network effect of our online marketplace. If we fail to continue to attract and retain our buyer base to our online marketplace, our operating results would be adversely affected.

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

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

Key Financial and Operating Metrics

The key operating and financial metrics that we use to assess the performance of our business are set forth below for the three **and six** months ended **March 31, 2024** **June 30, 2024** and 2023.

	Three Months Ended March 31,	Three Months Ended March 31,	Three Months Ended March 31,
	Three Months Ended June 30,	Three Months Ended June 30,	Three Months Ended June 30,
	2024	2024	2024
GMV			
NMV			
NMV			
	(In thousands, except AOV and percentages)	(In thousands, except AOV and percentages)	(In thousands, except AOV and percentages)

NMV

Consignment revenue

Consignment revenue

Consignment revenue

Direct revenue

Direct revenue

Direct revenue

Shipping services revenue

Shipping services revenue

Shipping services revenue

Number of orders

Number of orders

Number of orders

Take rate

Take rate

Take rate

Active buyers (1)

Active buyers (1)

Active buyers (1)

AOV

AOV

AOV

(1) During the three months ended June 30, 2024, we updated active buyers to represent buyers who purchased goods through our online marketplace during the period presented. Active buyers for the six months ended June 30, 2024 were buyers who purchased goods during the 6 months ended. Previously we had measured buyers who purchased goods during the 12 months ended on the last day of the period presented.

GMV

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

NMV

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

Consignment Revenue

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

Direct Revenue

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

Shipping Services Revenue

Shipping services revenue is generated from shipping fees we charge to buyers for outbound shipping and handling activities related to delivering purchased items to our buyers. We also generate shipping services revenue from the shipping fees

for consigned products returned by our buyers to us within **policy**. We recognize shipping services revenue over time as the shipping activity occurs. Shipping services revenue excludes the effect of buyer incentives and sales tax.

Number of Orders

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

Take Rate

Take rate is a key driver of our revenue and provides comparability to other marketplaces. The numerator used to calculate our take rate is equal to net consignment sales and the denominator is equal to the numerator plus consignor commissions. Net consignment sales represent the value of sales from consigned goods net of platform-wide discounts less consignor commission, product returns and order cancellations. We exclude direct revenue from our calculation of take rate because direct revenue represents the sale of inventory owned by us, which costs are included in cost of direct revenue. Our take rate reflects the high level of service that we provide to our consignors across multiple touch points and the consistently high velocity of sales for their goods. In November 2022, we updated our take rate structure with the goals of optimizing take rate, limiting consignment of lower value items, and increasing supply of higher value items. Previously, our take rate was primarily based on a tiered commission structure for consignors, where the more they sell the higher percent commission they earn. Consignors typically started at a 55% commission (which equals a 45% take rate for us) and could earn up to a 70% commission. In addition, there were commission exceptions from the tiered commission structure based on category and price point of the items.

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

Active Buyers

Active buyers include buyers who purchased goods through our online marketplace during the 12 months ended on the last day of the period presented, irrespective of returns or cancellations. We believe this metric reflects scale, brand awareness, buyer acquisition and engagement.

Average Order Value ("AOV")

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

Non-GAAP Financial Measures

Adjusted EBITDA

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

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

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

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

	Three Months Ended March 31,		Three Months Ended June 30,		Six Months Ended June 30,	
	2024	2024	2024	2023	2024	2023
Adjusted EBITDA Reconciliation:						
Net loss						
Net loss						
Net loss						
Depreciation and amortization						
Depreciation and amortization						
Depreciation and amortization						
Interest income						
Interest income						
Interest income						
Interest expense						
Interest expense						
Interest expense						
Provision for income taxes						
Provision for income taxes						
Provision for income taxes						
EBITDA						
EBITDA						
EBITDA						
Stock-based compensation						
Stock-based compensation						
Stock-based compensation						
CEO transition costs ⁽¹⁾						
CEO transition costs ⁽¹⁾						
CEO transition costs ⁽¹⁾						
Payroll taxes expense on employee stock transactions						
Payroll taxes expense on employee stock transactions						
Payroll taxes expense on employee stock transactions						
Legal settlement						
Legal settlement						
Legal settlement						
Restructuring charges ⁽²⁾						

Restructuring charges (2)
Restructuring charges (2)
Gain on extinguishment of debt (3)
Gain on extinguishment of debt (3)
Gain on extinguishment of debt (3)
Change in fair value of warrant liability (4)
Change in fair value of warrant liability (4)
Change in fair value of warrant liability (4)
Restructuring charges (1)
Gain on extinguishment of debt (2)
Change in fair value of warrant liability (3)
One time expenses (4)
Adjusted EBITDA
Adjusted EBITDA
Adjusted EBITDA

(1) The CEO transition charges for the three months ended March 31, 2023 consist of retention bonuses for certain executives incurred in connection with our founder's resignation on June 6, 2022.

(2) The restructuring charges for the three and six months ended **March 31, 2023** June 30, 2023 consist of impairment of right-of-use assets and property and equipment, employee severance charges, and other charges, including legal and transportation expenses. See "Note 10 - Restructuring" in the notes to the unaudited financial statements for disclosure regarding the restructuring expenses incurred.

(3) (2) The gain on extinguishment of debt for the **three** six months ended **March 31, 2024** June 30, 2024 reflects the difference between the carrying value of the Exchanged Notes and the fair value of the 2029 Notes.

(4) (3) The change in fair value of warrant liability for the three and six months ended **March 31, 2024** June 30, 2024 reflects the remeasurement of the warrants issued by the Company in connection with the Note Exchange in February 2024.

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

Components of our Operating Results

Revenue

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

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

Cost of Revenue

Cost of consignment revenue consists of credit card fees, packaging, customer service personnel-related costs, website hosting services, and consignor inventory adjustments related to lost or damaged products. Cost of direct revenue consists of the cost of goods sold, credit card fees, packaging, customer service

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

Marketing

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

Operations and Technology

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

Selling, General and Administrative

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

Restructuring charges

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

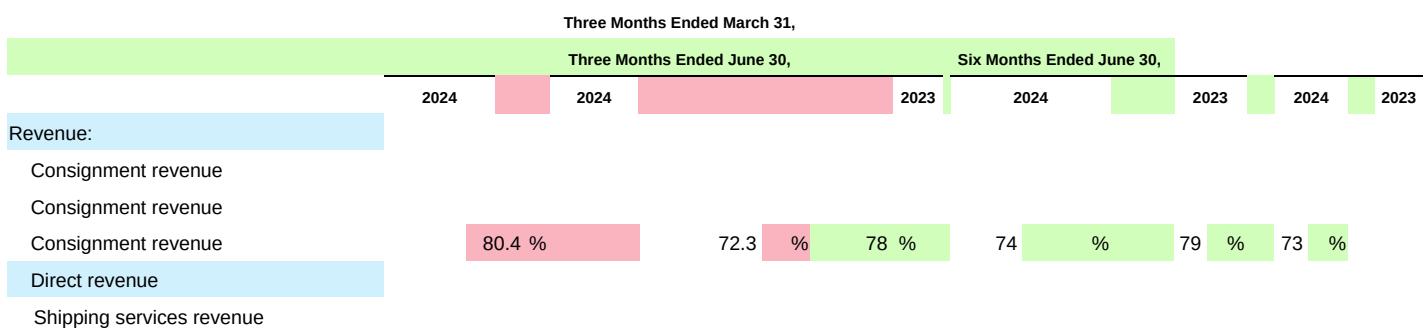
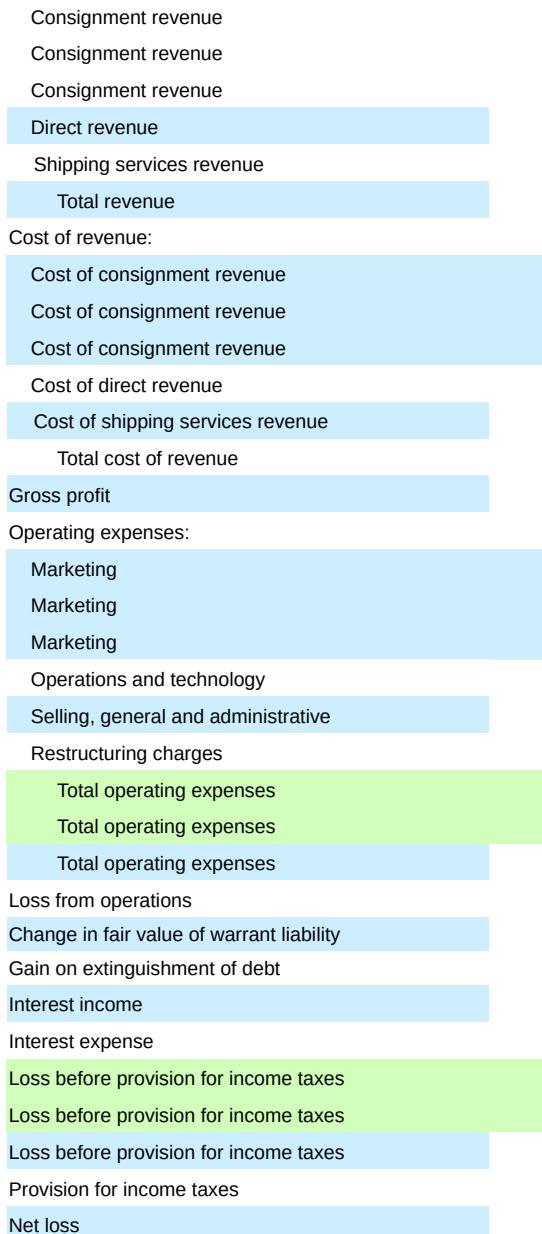
Provision for Income Taxes

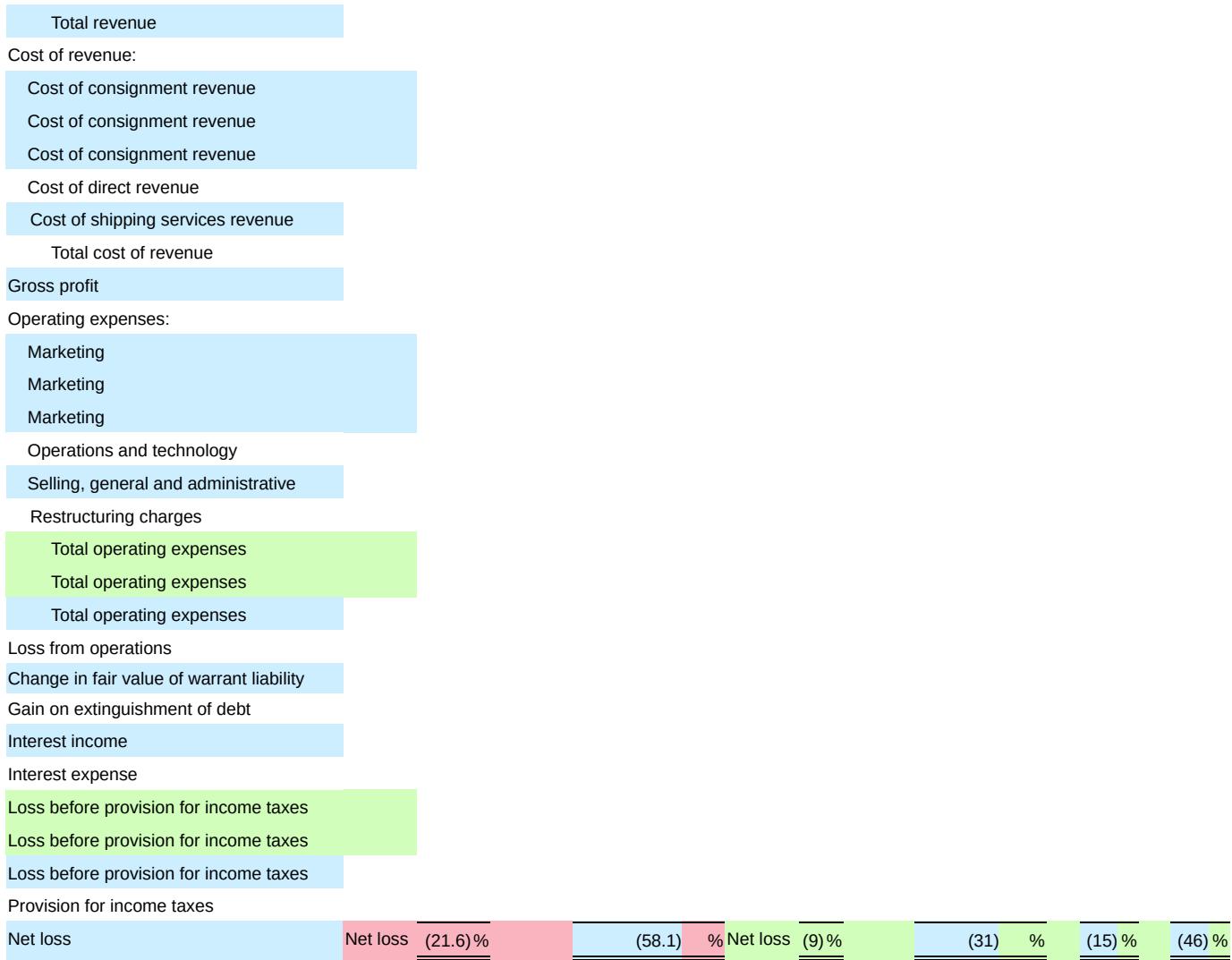
Our provision for income taxes consists primarily of state minimum taxes in the United States. We have a full valuation allowance for our net deferred tax assets primarily consisting of net operating loss carryforwards, accruals and reserves, stock-based compensation, fixed assets, and other book-to-tax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

Results of Operations

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

	Three Months Ended March 31,			Six Months Ended June 30,		
	2024	2024	2024	2023	2024	2023
Revenue:						





Comparison of the Three Months Ended **March 31, 2024** **June 30, 2024** and **2023**

Consignment Revenue

	Three Months			Change	%	Three Months			Change	%						
	Ended March 31,					Ended June 30,										
2024	2024	2023	Amount	2024	2023	Amount	2024	2023	Amount	2024						
(In thousands, except percentage)																
(In thousands, except percentage)																
(In thousands, except percentage)																
Consignment	Consignment			Consignment			Consignment									
revenue	revenue	\$115,648	\$	\$102,643	\$	\$13,005	13	13 %	revenue	\$112,714	\$	\$96,577	\$	\$16,137	17	17 %

Consignment revenue increased by \$13.0 million \$16.1 million, or 13%, 17% in the three months ended March 31, 2024 June 30, 2024 compared to the three months ended March 31, 2023 June 30, 2023. The increase in revenue was driven primarily by an increase in consignment GMV and improvement in our take rate during the three months ended March 31, 2024 June 30, 2024 compared to the three months ended June 30, 2023.

Overall GMV growth increased by 4% during the three months ended March 31, 2024 was driven by an 8% increase in AOV driven by a year-over-year increase in average selling prices, partially offset by a 6% decrease in orders.

Returns and cancellations as a percentage of GMV for the three months ended March 31, 2024 was 25.9%, compared to 26.2% for the three months ended March 31, 2023 June 30, 2024. Our take rate increased to 38.4% 38.5% from 37.4% 36.7% during the three months ended March 31, 2024 June 30, 2024 compared to the same period last year three months ended June 30, 2023 due to the update of our commission structure which went into effect on November 1, 2022. Additionally, returns and cancellations as a percentage of GMV improved for the three months ended June 30, 2024 to 25.3% from 28.2% for the three months ended June 30, 2023.

Direct Revenue

		Three Months Ended															
		March 31,		Change													
		June 30,		Change													
2024		2024		2023		Amount		%		2024		2023					
(In thousands, except percentage)																	
(In thousands, except percentage)																	
(In thousands, except percentage)																	
Direct	Direct	revenue	\$12,709	\$	\$ 24,953	\$	\$ (12,244)	(49)	(49)%	Direct	\$16,724	\$	\$20,887	\$	\$ (4,163)	(20)	(20)%

Direct revenue decreased by \$12.2 million \$4.2 million, or 49% 20%, in the three months ended March 31, 2024 June 30, 2024 compared to the three months ended March 31, 2023 June 30, 2023. The decrease was primarily driven by our planned actions to minimize vendor-purchased company-owned inventory as the margin profile of our direct revenue is lower than consignment revenue. We recognize direct revenue on a gross basis upon shipment of the purchased good to the buyer. Direct revenue as a percentage of total revenue may vary from period to period primarily based on the amount growth of consignment revenue.

Shipping Services Revenue

		Three Months Ended															
		March 31,		Change													
		June 30,		Change													
2024		2024		2023		Amount		%		2024		2023					
(In thousands, except percentage)																	
(In thousands, except percentage)																	
(In thousands, except percentage)																	
Shipping	Shipping	services	\$15,443	\$	\$ 14,308	\$	\$ 1,135	8	8 %	Shipping	\$15,496	\$	\$13,391	\$	\$ 2,105	16	16 %
services	services	revenue								revenue							

Shipping services revenue increased by \$1.1 million \$2.1 million, or 8% 16%, in the three months ended March 31, 2024 June 30, 2024 compared to the three months ended March 31, 2023 June 30, 2023 primarily due to the increase in the number of orders in the three months ended June 30, 2024 and due to an increase in the standard shipping fee per order, partially offset by a decrease in the number of orders in the three months ended March 31, 2024 compared to the three months ended March 31, 2023. order.

Cost of Consignment Revenue

		Three Months											
		Ended March 31,		Change									
		Ended June 30,		Change									
2024		2024		2023		Amount		%		2024		2023	
(In thousands, except percentage)													
(In thousands, except percentage)													
(In thousands, except percentage)													

Cost of consignment revenue	Cost of revenue	\$13,280	\$	\$15,529	\$	\$(2,249)	(14)	(14)%	Cost of consignment revenue	\$13,108	\$	\$14,575	\$	\$(1,467)	(10)	(10)%
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Cost of consignment revenue decreased by \$2.2 million \$1.5 million, or 14% 10%, in the three months ended March 31, 2024 June 30, 2024 compared to the three months ended March 31, 2023 June 30, 2023, driven by efficiencies in our cost leverage.

Consignment revenue gross margin increased by 365 346 basis points in the three months ended March 31, 2024 June 30, 2024 compared to the three months ended March 31, 2023 due to an June 30, 2023 primarily driven by the improvement in our average take rate during and the three months ended March 31, 2024, resulting increase in consignment revenue.

Cost of Direct Revenue

	Three Months Ended			Amount	%	2024	2023	Amount	%								
	March 31,		Change														
	June 30,		Change														
(In thousands, except percentage)																	
(In thousands, except percentage)																	
(In thousands, except percentage)																	
Cost of direct revenue	Cost of direct revenue	\$12,285	\$	\$ 25,030	\$	\$(12,745)	(51)	(51)%	Cost of direct revenue	\$13,760	\$	\$20,446	\$	\$(6,686)	(33)	(33)%	

Cost of direct revenue decreased by \$12.7 million \$6.7 million, or 51% 33%, in the three months ended March 31, 2024 June 30, 2024 compared to the three months ended March 31, 2023 June 30, 2023. The decrease was primarily attributable to the decrease in direct revenue compared to the prior year.

Direct revenue gross margin increased by 364 1,561 basis points for the three months ended March 31, 2024 June 30, 2024, primarily driven by strategic liquidation of company owned inventory sold at discounted prices, which resulted in the sell through of inventory that was previously reserved. The margin profile of our direct revenue is lower than the margin profile of our consignment revenue.

Cost of Shipping Services Revenue

	Three Months Ended June 30,			Amount	%	2024	2023
	2024		Change				
	2023						
(In thousands, except percentage)							
Cost of shipping services revenue		\$ 10,600	\$ 9,660	\$ 940	10 %		

	Three Months Ended March 31,			Amount	%	2024	2023
	2024		Change				
	2023						
(In thousands, except percentage)							
Cost of shipping services revenue		\$ 10,956	\$ 11,362	\$ (406)	(4)%		

Cost of shipping services revenue decreased increased by \$0.4 million \$0.9 million, or 4% 10%, in the three months ended March 31, 2024 June 30, 2024 compared to the three months ended March 31, 2023 June 30, 2023, primarily due to a 6% decrease 4% increase in the number of orders. orders and increased cost per shipment.

The shipping services revenue gross margin increased by 847 373 basis points for the three months ended March 31, 2024 June 30, 2024, primarily due to the increase in the standard shipping fee per order.

Total Gross Margin

Our total gross margin increased by 1,119 829 basis points in the three months ended March 31, 2024 June 30, 2024 compared to the three months ended March 31, 2023 June 30, 2023 due to the increase in consignment revenue and decrease in direct revenue as a percentage of total revenue and the improvement in our take rate. Gross margin may vary from period to period.

Marketing

Three Months Ended March				Change		Three Months Ended June				Change		
2024	2024	2023	Amount	%	2024	2023	Amount	%	2024	2023	Amount	%
(In thousands, except percentage)												
(In thousands, except percentage)												
(In thousands, except percentage)												
Marketing	Marketing	\$15,283	\$ 17,518	\$(2,235)	(13)	(13)%	Marketing	\$13,759	\$ 15,351	\$(1,592)	(10)	(10)%

Marketing expense decreased by \$2.2 million \$1.6 million, or 13% 10%, in the three months ended March 31, 2024 June 30, 2024 compared to the three months ended March 31, 2023 June 30, 2023. The decrease was primarily due to a decrease in decreased advertising costs.

As a percent of revenue, marketing expense decreased to 10.6% 9% from 12.3% 12% in the three months ended March 31, 2024 June 30, 2024 and 2023, respectively. These expenses may vary from period to period as a percentage of revenue, depending primarily upon our marketing investments. We expect these expenses to decrease as a percentage of revenue over the longer term.

Operations and Technology

Three Months Ended				Change		Three Months Ended				Change		
2024	2024	2023	Amount	%	2024	2023	Amount	%	2024	2023	Amount	%
(In thousands, except percentage)												
(In thousands, except percentage)												
(In thousands, except percentage)												
Operations and technology	Operations and technology	\$62,972	\$ 68,032	\$(5,060)	(7)	(7)%	Operations and technology	\$65,422	\$ 65,575	\$(153)	0	0 %

Operations and technology expense decreased by \$5.1 million, or 7%, remained relatively flat in the three months ended March 31, 2024 June 30, 2024 compared to the three months ended March 31, 2023 June 30, 2023. The decrease was primarily due to lower employee compensation related expenses due to a decrease in headcount related to the savings plan implemented during 2023.

As a percent of revenue, operations and technology expense decreased to 43.8% 45% from 47.9% 50% in the three months ended March 31, 2024 June 30, 2024 and 2023, respectively. These expenses may vary from period to period as a percentage of revenue, depending primarily upon when we choose to make more significant investments. We expect these expenses to decrease as a percentage of revenue over the longer term.

Selling, General and Administrative

Three Months Ended March 31,				Change		Three Months Ended June 30,				Change		
2024	2024	2023	Amount	%	2024	2023	Amount	%	2024	2023	Amount	%
(In thousands, except percentage)												
(In thousands, except percentage)												
(In thousands, except percentage)												
Selling, general and administrative	Selling, general and administrative	\$46,770	\$ 49,845	\$(3,075)	(6)	(6)%	Selling, general and administrative	\$47,082	\$ 44,326	\$ 2,756	6	6 %

Selling, general and administrative expense decreased increased by \$3.1 million \$2.8 million, or 6%, in the three months ended March 31, 2024 June 30, 2024 compared to the three months ended March 31, 2023 June 30, 2023. The change increase was primarily due to lower legal settlement expenses,

lower increased employee compensation and lease related expenses due to an increase in headcount reductions and office closures as a result of compared to the savings plan implemented during 2023.

prior period.

As a percent of revenue, selling, general and administrative expense decreased to 32.5% 32% from 35.1% 34% in the three months ended June 30, 2024 compared to the three months ended June 30, 2023. These expenses may vary from period to period as a percentage of revenue. We expect these expenses to decrease as a percentage of revenue over the longer term.

Restructuring charges

	Three Months Ended June 30,		Change	
	2024	2023	Amount	%
	(In thousands, except percentage)			
Restructuring charges	\$ —	\$ 1,864	\$ (1,864)	100 %

We did not incur any restructuring charges during the three months ended June 30, 2024, compared to \$1.9 million in the three months ended June 30, 2023. We incurred charges to reduce our real estate presence and operating expenses through the closure of certain retail and office locations and workforce reduction during the three months ended June 30, 2023, which were substantially completed during 2023.

Change in Fair Value of Warrant Liability

	Three Months Ended June 30,		Change	
	2024	2023	Amount	%
	(In thousands, except percentage)			
Change in fair value of warrant liability	\$ 5,630	\$ —	\$ 5,630	100 %

The fair value of warrant liability decreased by \$5.6 million, or 100% for the three months ended June 30, 2024 compared to the three months ended June 30, 2023. The change was due to the unrealized gain on the change in fair value of the warrant liability from March 31, 2024 to June 30, 2024 (See Note 6 — Non-convertible Notes, Net). The Company issued warrants to acquire an aggregate of up to 7,894,737 shares (subject to adjustment in accordance with the terms of the warrants) of the Company's common stock as part of the Note Exchange in February 2024. The cumulative fair value adjustment since inception is \$10.0 million.

Interest Income

	Three Months Ended June 30,		Change	
	2024	2023	Amount	%
	(In thousands, except percentage)			
Interest income	\$ 2,263	\$ 2,404	\$ (141)	(6)%

Interest income decreased by \$0.1 million, or 6%, for the three months ended June 30, 2024 as compared to the three months ended June 30, 2023.

Interest Expense

	Three Months Ended June 30,		Change	
	2024	2023	Amount	%
	(In thousands, except percentage)			
Interest expense	\$ (5,769)	\$ (2,678)	\$ (3,091)	115 %

Interest expense increased by \$3.1 million, or over 100% for the three months ended June 30, 2024 compared to the three months ended June 30, 2023 due to the contractual interest expense related to the 2029 Notes issued in February 2024.

Comparison of the Six Months Ended June 30, 2024 and 2023

Consignment Revenue

	Six Months Ended June 30,		Change	
	2024	2023	Amount	%
	(In thousands, except percentage)			
Consignment revenue, net	\$ 228,362	\$ 199,220	\$ 29,142	15 %

Consignment revenue increased by \$29.1 million, or 15%, in the six months ended June 30, 2024 compared to the six months ended June 30, 2023. The increase in revenue was driven primarily by an increase in consignment GMV, a 4% increase in our AOV and 140 basis point improvement in our take rate during the six months ended June 30, 2024 compared to the six months ended June 30, 2023. Overall GMV increased by 3% during the six months ended June 30, 2024. The increase in GMV is driven by an increase in consignment GMV, slightly offset by a decrease in direct GMV.

Additionally, returns and cancellations as a percentage of GMV improved for the six months ended June 30, 2024 to 25.6% from 27.2% for the six months ended June 30, 2023. Our take rate increased to 38.4% from 37.0% during the six months ended June 30, 2024 compared to the same period last year due to the update of our commission structure which went into effect on November 1, 2022.

Direct Revenue

	Six Months Ended June 30,		Change	
	2024	2023	Amount	%
	(In thousands, except percentage)			
Direct revenue	\$ 29,433	\$ 45,840	\$ (16,407)	(36)%

Direct revenue decreased by \$16.4 million, or 36%, in the six months ended June 30, 2024 compared to the six months ended June 30, 2023. The decrease was primarily driven by our planned actions to minimize vendor-purchased company-owned inventory as the margin profile of our direct revenue is lower than consignment revenue. We recognize direct revenue on a gross basis upon shipment of the purchased good to the buyer. Direct revenue as a percentage of total revenue may vary from period to period primarily based on the growth of consignment revenue.

Shipping Services Revenue

	Six Months Ended June 30,		Change	
	2024	2023	Amount	%
	(In thousands, except percentage)			
Shipping services revenue	\$ 30,939	\$ 27,699	\$ 3,240	12 %

Shipping services revenue increased by \$3.2 million, or 12%, in the six months ended June 30, 2024 compared to the six months ended June 30, 2023 primarily due to an increase in the standard shipping fee per order.

Cost of Consignment Revenue

	Six Months Ended June 30,		Change	
	2024	2023	Amount	%
	(In thousands, except percentage)			
Cost of consignment revenue, net	\$ 26,388	\$ 30,104	\$ (3,716)	(12)%

Cost of consignment revenue decreased by \$3.7 million, or 12%, in the six months ended June 30, 2024 compared to the six months ended June 30, 2023, driven by a decrease in overhead costs, including packaging and employee compensation related expenses.

Consignment revenue gross margin increased by 356 basis points in the six months ended June 30, 2024 compared to the six months ended June 30, 2023, primarily driven by the improvement in take rate and the resulting increase in consignment revenue.

Cost of Direct Revenue

	Six Months Ended June 30,		Change	
	2024	2023	Amount	%
	(In thousands, except percentage)			
Cost of direct revenue	\$ 26,045	\$ 45,476	\$ (19,431)	(43)%

Cost of direct revenue decreased by \$19.4 million, or 43%, in the six months ended June 30, 2024 compared to the six months ended June 30, 2023. The decrease was primarily attributable to the decrease in direct revenue compared to the prior year.

Direct revenue gross margin increased by 1,072 basis points for the six months ended June 30, 2024, primarily driven by strategic liquidation of company owned inventory sold at discounted prices, which resulted in sell through of inventory that was previously reserved. The margin profile of our direct revenue is lower than the margin profile of our consignment revenue.

Cost of Shipping Services Revenue

	Six Months Ended June 30,		Change	
	2024	2023	Amount	%
(In thousands, except percentage)				
Cost of shipping services revenue	\$ 21,556	\$ 21,022	\$ 534	3 %

Cost of shipping services revenue increased by \$0.5 million, or 3%, in the six months ended June 30, 2024 compared to the six months ended June 30, 2023, primarily due to an increase in cost per shipment.

The shipping services revenue gross margin increased by 622 basis points for the six months ended June 30, 2024, primarily due to the increase in the standard shipping fee per order.

Total Gross Margin

Our total gross margin increased by 979 basis point for the six months ended June 30, 2024 compared to the six months ended June 30, 2023 primarily driven by the increase in consignment revenue and decrease in direct revenue as a percentage of total revenue and the improvement in our take rate. Gross margin may vary from period to period.

Marketing

	Six Months Ended June 30,		Change	
	2024	2023	Amount	%
(In thousands, except percentage)				
Marketing	\$ 29,042	\$ 32,869	\$ (3,827)	(12)%

Marketing expense decreased by \$3.8 million, or 12%, in the six months ended June 30, 2024 compared to the six months ended June 30, 2023. The decrease was primarily due to decreased advertising costs.

As a percent of revenue, marketing expense decreased to 10% from 12% in the six months ended June 30, 2024 and 2023, respectively. These expenses may vary from period to period as a percentage of revenue, depending primarily upon our marketing investments. We expect these expenses to decrease as a percentage of revenue over the longer term.

Operations and Technology

	Six Months Ended June 30,		Change	
	2024	2023	Amount	%
(In thousands, except percentage)				
Operations and technology	\$ 128,394	\$ 133,607	\$ (5,213)	(4)%

Operations and technology expense decreased by \$5.2 million or 4% in the six months ended June 30, 2024 compared to the six months ended June 30, 2023. The decrease was primarily due to lower employee compensation related expenses due to a decrease in headcount related to the savings plan implemented during 2023.

As a percent of revenue, operations and technology expense decreased to 44% from 49% in the six months ended June 30, 2024 and 2023, respectively. These expenses may vary from period to period as a percentage of revenue, depending primarily upon when we choose to make more significant investments. We expect these expenses to decrease as a percentage of revenue over the longer term.

Selling, General and Administrative

	Six Months Ended June 30,		Change	
			2024	2023
			Amount	%
(In thousands, except percentage)				
Selling, general and administrative		\$ 93,852	\$ 94,171	\$ (319) 0 %

Selling, general and administrative expense remained relatively flat in the six months ended June 30, 2024 compared to the six months ended June 30, 2023.

As a percent of revenue, selling, general and administrative expense decreased to 33% from 35% in the six months ended June 30, 2024 and 2023, respectively. These expenses may vary from period to period as a percentage of revenue. We expect these expenses to decrease as a percentage of revenue over the longer term.

Restructuring Charges charges

	Three Months		Change					
	Ended March 31,							
			Amount	%				
(In thousands, except percentage)								
(In thousands, except percentage)								
(In thousands, except percentage)								
Restructuring charges	Restructuring charges	\$ 196	\$ 36,388	\$ (36,192)	(99) (99)%			
Restructuring charges	Restructuring charges	\$ 196	\$ 38,252	\$ (38,056)	(99) (99)%			

Restructuring charges decreased by \$36.2 million, \$38.1 million, or 99% for, during the three six months ended March 31, 2024 as June 30, 2024 compared to the three six months ended March 31, 2023 June 30, 2023. We incurred charges to reduce our real estate presence and operating expenses through the closure of certain retail and office locations and workforce reduction during the three six months ended March 31, 2023 June 30, 2023, which were substantially completed during 2023.

Change in Fair Value of Warrant Liability

	Three Months		Change					
	Ended March 31,							
			Amount	%				
(In thousands, except percentage)								
(In thousands, except percentage)								
(In thousands, except percentage)								
Change in fair value of warrant liability	Change in fair value of warrant liability	\$ (15,583)	\$ —	\$ (15,583)	100 100 %			
Change in fair value of warrant liability	Change in fair value of warrant liability	\$ (9,953)	\$ —	\$ (9,953)	100 100 %			

The fair value of warrant liability increased by \$15.6 million \$10.0 million, or 100% for the three six months ended March 31, 2024 June 30, 2024 compared to the three six months ended March 31, 2023 June 30, 2023. The Company issued warrants to acquire an aggregate of up to 7,894,737 shares (subject to adjustment in accordance with the terms of the warrants) of the Company's common stock as part of the Note Exchange in February 2024. The change was due to the unrealized loss on the change in fair value of the warrant liability from the issuance date to March 31, 2024 June 30, 2024 (See Note 6 — Non-convertible Notes, Net).

Gain on Extinguishment of Debt

		Three Months									
		Ended March									
		31,		Change							
		Six Months									
		Ended June 30,		Change							
2024		2024	2023	Amount		%		2024	2023	Amount	%
(In thousands, except percentage)											
(In thousands, except percentage)											
(In thousands, except percentage)											
Gain on extinguishment of debt	Gain on extinguishment of debt	\$4,177	\$—	\$4,177	100	100 % of debt	\$4,177	\$—	\$4,177	100	100 %

Gain on extinguishment of debt increased by \$4.2 million, or 100% for the three six months ended March 31, 2024 June 30, 2024 compared to the three six months ended March 31, 2023. The increase was due to the gain recorded from the extinguishment of the Exchanged Notes (as defined below) and the issuance of the 2029 Notes (See Note 6 — Non-convertible Notes, Net).

Interest Income

	Three Months Ended March 31,		Change	
	2024	2023	Amount	%
(In thousands, except percentage)				
Interest income	\$ 2,069	\$ 2,053	\$ 16	1 %
Six Months Ended June 30,				
	2024	2023	Amount	%
(In thousands, except percentage)				
Interest income	\$ 4,332	\$ 4,457	\$ (125)	(3)%

Interest income increased decreased by an immaterial amount for \$0.1 million, or 3% in the three six months ended March 31, 2024 as June 30, 2024 compared to the three six months ended March 31, 2023 June 30, 2023.

Interest Expense

		Three Months Ended								
		March 31,		Change						
		Six Months Ended June								
		30,		Change						
2024		2024	2023	Amount	%	2024	2023	Amount	%	
(In thousands, except percentage)										
(In thousands, except percentage)										
(In thousands, except percentage)										
Interest expense	Interest expense	\$ (3,751)	\$ (2,667)	\$ (1,084)	41%	Interest expense	\$ (9,520)	\$ (5,345)	\$ (4,175)	78%

Interest expense increased by \$1.1 million or 41% for the three six months ended March 31, 2024 compared to the three six months ended March 31, 2023. The increase was primarily due to the issuance of contractual interest expense related to the 2029 Notes. Notes issued in February 2024.

Liquidity and Capital Resources

As of March 31, 2024 June 30, 2024, we had cash and cash equivalents of \$166.0 \$150.7 million and an accumulated deficit of \$1,150.7 \$1,167.4 million. With the expiration of the Revolving Credit Agreement in the three months ended June 30, 2023, we had restricted cash of \$14.9 million \$14.9 million as of March 31, 2024 June 30, 2024, consisting of cash deposited with a financial institution as collateral for our letters of credit, facility leases and credit cards. Since inception, we have generated negative cash flows from operations and have primarily financed our operations through equity and convertible debt financings. In July 2019, we received net proceeds of \$315.5 million upon completion of our IPO on July 2, 2019. In June 2020, we received net proceeds of \$143.3 million from the issuance of the 2025 Notes and the related capped call transactions. In March 2021, we received net proceeds of \$244.5 million from the 2028 Notes and the related capped call transactions. In February 2024, we exchanged \$145.8 million of the 2025 Notes and \$6.5 million of the 2028 Notes for \$135.0 million in aggregate principal amount of the 2029 Notes (the "Note Exchange"). As a result of the Note Exchange, we significantly extended the average maturity date of our outstanding indebtedness.

We expect that operating losses and negative cash flows from operations could continue in the foreseeable future. We believe our existing cash and cash equivalents as of March 31, 2024 June 30, 2024 will be sufficient to meet our working capital and capital expenditures needs for at least the next 12 months.

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

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

Cash Flows

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

	Three Months Ended March 31,		Six Months Ended June 30,	
	2024	2024	2023	2024
Net cash used in:				
Net cash (used in) provided by:				
Operating activities				
Operating activities				
Operating activities				
Investing activities				
Financing activities				
Net decrease in cash and cash equivalents				
Net decrease in cash, cash equivalents and restricted cash				

Net Cash Used in Operating Activities

During the three six months ended March 31, 2024 June 30, 2024, net cash used in operating activities was \$3.5 million \$10.2 million, which consisted of a net loss of \$31.1 million \$47.8 million, adjusted by non-cash charges of \$33.1 million \$54.5 million and cash outflows due to a net change of \$5.5 million \$16.9 million in our operating assets and liabilities. The net change in our non-cash charges operating assets and liabilities was primarily the result of cash outflows due to a \$12.7 million decrease in accrued consignor payable and a decrease of \$9.9 million in operating lease liabilities, partially offset by a decrease of \$4.8 million in prepaid expenses and other current assets.

During the unrealized loss on change in fair value of warrant liability which were issued in connection with the Note Exchange during the three six months ended March 31, 2024 June 30, 2023, net cash used in operating activities was \$60.9 million, which consisted of a net loss of \$123.8 million, adjusted by non-cash charges of \$85.1 million and cash outflows due to a net change of \$22.1 million in our operating assets and liabilities. The net change in our operating assets and liabilities was primarily the result of cash outflows due to a \$4.9 million \$19.7 million decrease in accrued consignor payable, a decrease of \$11.4 million in operating lease liabilities, and a \$3.0 million increase \$9.6 million decrease in accounts receivables other accrued and current liabilities, partially offset by a \$3.0 million decrease in prepaid expenses and other current assets.

During the three months ended March 31, 2023, net cash used in operating activities was \$30.4 million, which consisted of an increase of a net loss of \$82.5 million, adjusted by non-cash charges of \$60.2 million and cash outflows due to a net change of \$8.1 million in our operating assets and liabilities. The net change in our non-cash charges was primarily due to property, plant, equipment, and right-of-use asset impairments taken in connection with our reduction in real estate and savings plan during the three months ended March 31, 2023. The net change in our operating assets and liabilities was primarily the result of cash outflows due to a decrease of \$9.4 million in accrued consignor payable, a \$6.2 million decrease in operating lease liabilities, and a \$1.4 million decrease in accounts payable partially offset by cash inflows due to a decrease of \$8.7 million \$10.5 million in inventory and a \$2.6 million decrease \$5.2 million increase in accounts receivable.

Net Cash Used in Investing Activities

During the **three** **six** months ended **March 31, 2024** **June 30, 2024**, net cash used in investing activities was **\$5.3 million** **\$10.3 million**, which consisted of **\$2.1 million** **\$5.1 million** for purchases of property and equipment, net, including leasehold improvements and **\$3.2 million** **\$5.1 million** for capitalized proprietary software development costs.

During the **three** **six** months ended **March 31, 2023** **June 30, 2023**, net cash used in investing activities was **\$15.9 million** **\$27.3 million**, which primarily consisted of **\$11.7 million** **\$19.8 million** for purchases of property and equipment, net, including leasehold improvements and **\$4.2 million** **\$7.5 million** for capitalized proprietary software development costs.

Net Cash Used in Financing Activities

During the **three** **six** months ended **March 31, 2024** **June 30, 2024**, net cash used in financing activities was **\$0.9 million** **\$4.5 million**, which primarily consisted of payment of debt issuance costs related to the Note Exchange.

During the **three** **six** months ended **March 31, 2023** **June 30, 2023**, net cash used in provided by financing activities remained relatively flat. Proceeds of \$0.4 million from the issuance of employee stock purchase plan ("ESPP") shares was \$0.3 million, which consisted offset by \$0.4 million of taxes paid related to restricted stock units vesting.

Convertible Senior Notes

As of **March 31, 2024** **June 30, 2024**, we had 3.00% convertible senior notes due 2025 (the "2025 Notes") outstanding in an aggregate principal amount of \$26.7 million and 1.00% convertible senior notes due 2028 (the "2028 Notes") outstanding in an aggregate principal amount of \$281.0 million (together, the "Convertible Senior Notes"). A portion of the net proceeds from the sale of these Convertible Senior Notes was used to fund the net cost of entering into the capped call transactions described below. We intend to use the remainder of the net proceeds for general corporate purposes.

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

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

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

2029 Notes and Warrants

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

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

Contractual Obligations and Commitments

As of **March 31, 2024** **June 30, 2024**, there **have been** **were** no material changes **from** **to** the contractual obligations and commitments previously disclosed in our Annual Report on 10-K except for the following related to the Note Exchange described above and in "Note 4 — Fair Value Measurement" and "Note 6 — Non-convertible Notes, Net" to the condensed financial statements included in this report:

- As of **March 31, 2024** **June 30, 2024**, our total commitments and obligations in the aggregate principal amount plus the associated future interest payments for the 2025 Notes and 2028 Notes decreased by **\$152.3** **\$150.1** million and \$6.7 million, respectively; and
- On February 29, 2024, we issued the 2029 Notes and Warrants. As of **March 31, 2024** **June 30, 2024**, our cash requirements related to our 2029 Notes were \$231.7 million, of which \$12.0 million is expected to be paid within the next 12 months.

Critical Accounting Estimates

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

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

Note Exchange

During the **threesix** months ended **March 31, 2024** **June 30, 2024**, the Company accounted for the Note Exchange as a debt extinguishment and recorded a gain of \$4.2 million as the difference between the carrying amount of the Exchanged Notes and the fair value of the 2029 Notes. The fair value of the 2029 Notes is considered a critical estimate because the judgment in the valuation methods utilized and assessing an interest rate that would be available to the company of a similar debt instrument.

Warrants

The Warrants are accounted for as liabilities under ASC 480 since the warrants may be required to be settled in cash in case of a fundamental change, which could occur outside of the Company's control. The fair value of the warrant liability is

estimated using the Black-Scholes-Merton option-pricing model and changes in fair value are recognized on the Company's statement of operations.

Recent Accounting Pronouncements

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

Item 3. Quantitative and Qualitative Disclosures About Market Risk.

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

Item 4. Controls and Procedures.

Evaluation of Disclosure Controls and Procedures

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

Changes in Internal Control

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

Inherent Limitations on Effectiveness of Controls and Procedures

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

PART II—OTHER INFORMATION

Item 1. Legal Proceedings.

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

On November 14, 2018, Chanel, Inc. sued the Company in the U.S. District Court for the Southern District of New York. The Complaint alleged federal and state law claims of trademark infringement, unfair competition, and false advertising. On February 1, 2019, Chanel, Inc. filed its First Amended Complaint that included substantially similar claims against the Company. On March 4, 2019, the Company filed a Motion to Dismiss the First Amended Complaint, which was granted in part and dismissed in part on March 30, 2020. The surviving claims against the Company include trademark infringement under 15 U.S.C. § 1114, false advertising under 15 U.S.C. § 1125, and unfair competition under New York common law. On May 29, 2020, the Company filed its Answer to the Amended Complaint. On November 3, 2020, the Company sought leave to amend its Answer to assert counterclaims against Chanel, Inc. for violations of the Sherman Act, 15 U.S.C. §§ 1 & 2, the Donnelly Act, N.Y. Gen. Bus. Law. § 340, and New York common law. The motion for leave to amend was granted on February 24, 2021. On February 25, 2021, the Company filed its First Amended Answer, Affirmative Defenses and Counterclaims against Chanel. The Company's Counterclaims allege violations of the Sherman Act, 15 U.S.C. §§ 1 & 2, the Donnelly Act, N.Y. Gen. Bus. Law. § 340, and New York common law. On March 18, 2021, Chanel moved to dismiss the Company's Counterclaims and moved to strike the Company's unclean hands affirmative defense. Decisions on Chanel's motion to dismiss and motion strike are pending. The parties agreed to a stay in April 2021 to engage in settlement discussions. After several mediation sessions, the parties were unable to reach a resolution, and the stay was lifted in November 2021. Chanel then sought a partial stay of discovery on the Company's counterclaims and unclean hands defense while Chanel's motion to dismiss and strike those claims are pending, and on March 10, 2022, the Court granted Chanel's request. Since then, the parties have continued to engage in fact discovery regarding Chanel's counterfeiting and false advertising claims against the Company. Fact discovery

was scheduled to be completed by August 15, 2023, however, on July 19, 2023, the Court ordered a stay of the case at the parties' request to enable the parties to attempt mediation again. The mediation scheduled to begin on October 24, 2023 was postponed, and the parties are working to reschedule it in 2024. The final outcome of this litigation, including our liability, if any, with respect to Chanel's claims, is uncertain. An unfavorable outcome in this or similar litigation could adversely affect the Company's business and could lead to other similar lawsuits. The Company is not able to predict or reasonably estimate the ultimate outcome or possible losses relating to this claim.

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

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

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

Item 1A. Risk Factors.

Risk Factors Summary

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

Risks Relating to Our Business and Industry

- We have a history of losses and we may not be able to achieve or maintain profitability in the future.
- The savings plan we implemented in February 2023 may not result in anticipated savings, could result in total costs and expenses that are greater than expected and could disrupt our business.
- We may not be able to return to historic levels of revenue growth rate or effectively manage growth or new opportunities.
- We may not accurately forecast revenue and appropriately plan our expenses.
- We have experienced seasonal and quarterly variations in our revenue and operating results.
- Greater than expected product returns may exceed our reserve for returns.

- We may require additional capital to support our business growth. If such capital is not available to us, our business, operating results and financial condition may be harmed.
- Public health emergencies or outbreaks of epidemics, pandemics, or contagious diseases such as the COVID-19 pandemic have adversely affected, and could in the future, adversely affect our business and the business of our consignors and buyers.
- The failure of any bank in which we deposit our funds could reduce the amount of cash we have available to pay distributions and make additional investments.

Risks Relating to Our Strategy

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

Risks Relating to Supply

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

Risks Relating to Demand

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

Risks Related to Marketing and Brand Management

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

Risks Related to Our Merchandising and Fulfillment

- We may not be able to attract, train and retain specialized personnel and skilled employees.
- We may not be able to identify and lease authentication centers in suitable geographic regions.
- We may experience damage or destruction to our authentication centers or retail stores in which we store of the majority of the consigned luxury goods we offer through our online marketplace.
- Shipping is a critical part of our business and any changes in our shipping arrangements, costs, interruptions in shipping or damage to products in transit could adversely affect our operating results.
- We may be unable to successfully leverage technology to automate and drive efficiencies in our operations.

Risks Related to Data Security, Privacy and Fraud

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

Risks Related to Our Employees

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

Risks Related to Our Intellectual Property

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

Risks Relating to Litigation and Regulatory Uncertainty

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

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

Risks Related to Ownership of Our Common Stock

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

Risks Related to Our Outstanding Notes and Warrants

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

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

Risks Relating to Our Business and Industry

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

We experienced net losses of \$196.4 million, \$168.5 million and ~~\$31.1 million~~ \$47.8 million in 2021, 2022 ~~2023~~ and the ~~three~~ six months ended ~~March 31, 2024~~ June 30, 2024, respectively, and as of ~~March 31, 2024~~ June 30, 2024 we had an accumulated deficit of ~~\$1,150.7 million~~ \$1,167.4 million. Our key initiatives currently include growing profitable supply, improving efficiencies, and pursuing new revenue streams. If those initiatives or our investments do not prove successful or our market does not develop as we expect, we may not achieve profitability on the timeline we expect or at all, and may continue to experience losses over the long term. Any failure to increase our revenue sufficiently to keep pace with our investments and other expenses could prevent us from achieving or maintaining profitability or positive cash flow on a consistent basis. If we are unable to successfully address these risks and challenges as we encounter them, our business, financial condition and operating results could be adversely affected. We cannot assure you that we will ever achieve or sustain profitability and may continue to incur significant losses going forward.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Risks Relating to Our Strategy

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

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

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

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

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

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

Risks Relating to Supply

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

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

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

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

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

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

Risks Relating to Demand

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

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

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

National retailers and brands set pricing for new luxury goods that they sell and from time to time offer sales and promotional pricing, particularly during the fourth quarter holiday season, when we have historically made a substantial portion of our annual sales. Promotional pricing by these parties may lower the value of products consigned with us and our inventory and, in turn, reduce the value proposition for both our consignors and buyers. We have in the past experienced a reduction in our GMV and AOV due to fluctuations in the price of new luxury goods sold by retailers and brands, and we could experience similar reductions and fluctuations in the future. However, the timing and magnitude of such discounting can be difficult to predict and can be brought on by unique factors such as a retailer or brand going out of business and liquidating its inventory,

which may happen to a greater extent as a result of macroeconomic uncertainty, inflation, geopolitical instability due in part to the conflict between Russia and Ukraine, the Israel-Hamas war and weakened consumer demand. Any of the foregoing risks could adversely affect our business, financial condition and operating results.

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

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

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

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

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

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

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

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

We compete with vendors of new and pre-owned luxury goods, including branded luxury goods stores, department stores, traditional brick-and-mortar consignment stores, pawn shops, auction houses, specialty retailers, discount chains, independent retail stores, the online offerings of traditional retail competitors, resale players focused on niche or single categories, as well as technology-enabled marketplaces that may offer the same or similar luxury goods and services that we offer. Many of our competitors have longer operating histories, larger fulfillment infrastructures, greater brand recognition and technical capabilities, faster or lower-cost shipping, larger selections of goods for sale, greater financial, marketing, institutional and other resources and larger buyer bases than we do. As the market evolves, new competitors may emerge, including traditional retail competitors who expand their offerings to include resale. Some of our competitors may have greater resources than we do, which may allow them to derive greater revenue and profits from their existing buyer bases, acquire consignors at lower costs, achieve more favorable total product mixes or respond more quickly than we can to new or emerging technologies,

such as artificial intelligence and machine learning, and changes in consumer shopping behavior or preferences. These competitors may also adopt more aggressive pricing policies, commission structures or take rates, which may allow them to build larger consignor or buyer bases or generate revenue from their existing buyer bases more effectively than we do. New competitors may force us to decrease our take rates to remain competitive and negatively impact on our financial performance. If we fail to respond to competition effectively, our business and operating results may be adversely affected.

Risks Relating to Marketing and Brand Management

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

Our success depends on our ability to accurately and cost-effectively determine whether an item offered for consignment is an authentic product or genuine gemstone, piece of jewelry or work of art. From time to time, we receive counterfeit goods for consignment. While we continue to invest and innovate

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

We may not succeed in promoting and sustaining our brand.

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

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

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

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

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

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

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

The public disclosure of our Environmental, Social and Governance ("ESG") metrics may subject us to risks.

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

business with us, or investors' willingness to purchase or hold shares of our common stock, any of which could adversely affect our business, financial performance, and growth.

Risks Related to Our Merchandising and Fulfillment

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

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

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

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

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

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

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

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

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

We are building automation, artificial intelligence, machine learning and other capabilities to drive efficiencies in our merchandising and fulfillment operations. As we continue to add capacity, capabilities and automation, our operations will become increasingly complex and challenging. While we expect these technologies to improve productivity in many of our merchandising operations, including pricing, copywriting, authentication, photography and photo retouching,

any flaws or failures of such technologies could cause interruptions in and delays to our operations which may harm our business. We have created our own purpose-built technology to operate our business, which may lack efficiency or become obsolete as we grow and we also rely on technology from third parties. If these technologies do not perform in accordance with our expectations, third parties change the terms and conditions that govern their relationships with us, or if competition increases for the technology and services provided by third parties, our business may be harmed. In addition, the evolution of these technologies may create unforeseen competitive pressures or cause disruption.

Risks Related to Data Security, Privacy and Fraud

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

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

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

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

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

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

We may incur significant losses from fraud.

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

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

Risks Relating to Our Employees

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

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

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

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

Risks Relating to Our Intellectual Property

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

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

Risks Relating to Litigation and Regulatory Uncertainty

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

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

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

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

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

Our business, financial condition or operating results could be adversely affected as a result of an unfavorable resolution of the disputes and litigation referred to above.

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

Numerous state, federal and international laws, rules and regulations govern privacy, data protection and the collection, use and protection of personal information and other types of data we collect, use, disclose and otherwise process. These laws, rules and regulations are constantly evolving, and we expect that there will continue to be new proposed laws, regulations and industry standards concerning privacy, data protection and information security in the United States, the EU and other jurisdictions. For example, California enacted legislation that came into effect January 2020, the California Consumer Privacy Act (the "CCPA"), that requires covered companies to provide disclosures to California consumers and afford such consumers qualified privacy rights, such as rights of access, deletion and to opt-out of the sales of their personal information. The CCPA was amended by the California Privacy Rights Act (the "CPRA"), which went into effect on January 1, 2023. The CCPA, as amended, removes the exclusion of employment data from its auspices, adds new consumer privacy rights (such as the right to correct inaccurate personal information, or the right to opt out of the "sharing" of personal information for the purposes of cross-context behavioral advertising), expands business's obligations to secure contractual obligations from service providers and third parties, and expands business's obligations with respect to opt-out preference signals. The new California Privacy Protection Agency completed its first round of rule making but has left many new requirements, such as data privacy and security risk assessments and the right to opt out of certain data profiling activities, for its second round of rule making, which began in March 2023. It remains unclear how these new amendments will be interpreted or when the second round of rule making activity will conclude. The CCPA may require us to modify our data processing practices and policies and to incur substantial costs and expenses in an effort to comply. Similarly, several other U.S. states, including Virginia, Connecticut, Colorado, Utah, Iowa, Indiana, Montana, Oregon, Tennessee and Texas have passed similar consumer data privacy laws that also extend privacy rights to individuals, including the rights to opt out of targeted advertising. Finally, the European Commission adopted a General Data Protection Regulation that became fully effective on May 25, 2018, imposing stringent EU data protection requirements. Recent litigation in the EU has driven significant changes in enforcement and interpretation, and we cannot yet fully determine the impact these or future laws, rules and regulations may have on our business or operations.

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

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

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

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

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

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

The sale of consigned goods through our online marketplace is subject to regulation, including by regulatory bodies such as the U.S. Consumer Product Safety Commission, the Federal Trade Commission, the U.S. Fish and Wildlife Service and other international, federal, state and local governments and regulatory authorities. These laws and regulations are complex, vary from state to state and change often. We receive luxury goods on consignment from numerous consignors located in all 50 U.S. states and Puerto Rico, and the goods we receive from our consignors may contain materials such as fur, skin, ivory and other

exotic animal product components, that are subject to regulation. Our standard consignor terms and conditions require consignors to comply with applicable laws when consigning their goods. Failure of our consignors to comply with applicable laws, regulations and contractual requirements could lead to litigation or other claims against us, resulting in increased legal expenses and costs. Moreover, failure by us to effectively monitor the application of these laws and regulations to our business, and to comply with such laws and regulations, may negatively affect our brand and subject us to penalties and fines.

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

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

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

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

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

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

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

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

We are subject to the reporting requirements under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), the Sarbanes-Oxley Act of 2002 (the "Sarbanes-Oxley Act") and the rules and regulations of the applicable listing standards of The Nasdaq Stock Market. Section 404 of the Sarbanes-Oxley Act requires that we maintain effective internal control over financial reporting and disclosure controls and procedures. In particular, we must perform system and process evaluations, document our controls and perform testing of our key controls over financial reporting to allow for management and our independent public accounting firm to report on the effectiveness of our internal control over financial reporting. If we are not able to continue to comply with the requirements of Section 404 of the Sarbanes-Oxley Act or if we encounter difficulties in the timely and accurate reporting of our financial results, or if we or our independent

registered public accounting firm identify deficiencies in our internal control over financial reporting that are deemed to be material weaknesses, our investors could lose confidence in our reported financial information, the market price of our stock may decline and we could be subject to lawsuits, sanctions or investigations by regulatory authorities, which would require additional financial and management resources.

Risks Relating to Ownership of Our Common Stock

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

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

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

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

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

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

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

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

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

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

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

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

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

Risks Related to Our Outstanding Notes and Warrants

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

As of **March 31, 2024** **June 30, 2024**, the principal amount of our 2025 Notes was \$26.7 million, the principal amount of our 2028 Notes was \$281.0 million, the principal amount of our 2029 Notes was \$135.0 million. Additionally, the Company issued warrants to acquire an aggregate of up to 7,894,737 shares of our common stock (subject to adjustment in accordance with the terms of the Warrants). We may be required to use a substantial portion of our cash flows from operations to pay interest and principal on our indebtedness. Such payments will reduce the funds available to use for working capital, capital expenditures and other corporate purposes and limit our ability to obtain additional financing, which may in turn limit our ability to implement our business strategy, heighten our vulnerability to downturns in our business, the industry, or in the general economy, limit our flexibility in planning for, or reacting to, changes in our business and the industry and prevent us from taking advantages of business opportunities as they arise. If we are unable to generate such cash flow to service our debt, we may be required to adopt one or more alternatives, such as selling assets, incurring additional debt, restructuring debt or issuing additional equity on terms that may be onerous or highly dilutive. These alternatives may be insufficient to overcome macroeconomic conditions that may affect us. The duration and severity of macroeconomic uncertainty, any ensuing economic downturns, including economic recession or depression, could directly impact our ability to implement alternatives to service our debt. We may not be able to engage in any of these activities or engage in these activities on desirable terms, which could result in a default on our debt obligations.

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

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

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

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

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

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

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

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

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

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

Prior to the adoption of ASU 2020-06, under Financial Accounting Standards Board ("FASB") Accounting Standards Codification ("ASC") 470-20, Debt with Conversion and Other Options, we accounted for the liability and equity components of the Convertible Senior Notes separately because the Convertible Senior Notes may be settled entirely or partially in cash upon conversion in a manner that reflects our economic interest cost. This bifurcation resulted in a debt discount for Convertible Senior Notes. See "Note 2—Summary of Significant Accounting Policies—Convertible Senior Notes." We used the effective interest method to

amortize the debt discount to interest expense over the amortization period, which is the expected life of the Convertible Senior Notes. However, we adopted ASU 2020-06 as of January 1, 2022, under which we now account for the Convertible Senior Notes as a single liability measured at their amortized cost. Upon adoption, we recorded a cumulative effect adjustment of \$13.4 million as a reduction to accumulated deficit and a reduction to additional paid in capital of \$112.1 million related to amounts attributable to the value of the conversion options that had previously been recorded in equity. Additionally, we recorded an increase to the Convertible Senior Notes balance by an aggregate amount of \$98.6 million as a result of the reversal of the separation of the convertible debt between debt and equity. As a result of the adoption of ASU 2020-06, we also derecognized \$27.5 million of deferred tax liabilities and recognized \$0.2 million of deferred tax assets, resulting in a \$27.7 million increase to the net deferred tax assets and a corresponding increase of \$27.7 million in the offsetting valuation allowance.

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

amendments to the accounting treatment for the Convertible Senior Notes, could adversely affect our financial results, the trading price of our common stock and the trading price of the Convertible Senior Notes.

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

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

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

In connection with the Note Exchange, we issued Warrants dated February 29, 2024 to purchase 7,894,737 shares (subject to adjustment in accordance with their terms) of our common stock to holders of the Exchanged Notes. The Warrants have an Exercise Price of \$1.71 per share, subject to certain cashless exercise provisions contained therein and adjustment in accordance with the terms of the Warrants. The Warrants are exercisable from the date of issuance until they expire on March 1, 2029.

The Warrants were issued pursuant to Section 4(a)(2) of the Securities Act of 1933, as amended.

Use of Proceeds from our IPO

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

Item 3. Defaults Upon Senior Securities.

Not applicable.

Item 4. Mine Safety Disclosures.

Not applicable.

Item 5. Other Information.

Rule 10b5-1 Trading Plans

On March 7, 2024, Rob Krolik, a member of the Company's Board of Directors, adopted a new trading plan for the sale of securities that is intended to satisfy the affirmative defense conditions of Rule 10b5-1 of the Securities Exchange Act of 1934, as amended (the "Krolik Plan"). The Krolik Plan provides for the

sale of up to a maximum of 74,949 shares of the Company's common stock that he has received or will receive following the vesting of restricted stock units. The first possible trade date under the Krolik Plan is June 6, 2024, and the end date of the Krolik Plan is March 7, 2025, subject to certain conditions. Not applicable.

Item 6. Exhibits.

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

Exhibit Number	Description
10.1+	Offer Letter by and between The RealReal, Inc. and Ajay Gopal dated February 19, 2024 (incorporated herein by reference from Exhibit 10.1 to the Company's Form 8-K filed on February 21, 2024).
10.2**	Form of Exchange Agreement by and between The RealReal, Inc. and the Noteholder, as defined therein, dated February 29, 2024 (incorporated herein by reference to Exhibit 10.41 to the Company's Annual Report on Form 10-K filed on March 1, 2024).
10.3	Indenture by and between The RealReal, Inc., the Guarantors party thereto and Glas Trust Company LLC, dated February 29, 2024 (incorporated herein by reference to Exhibit 10.42 to the Company's Annual Report on Form 10-K filed on March 1, 2024).
10.4	Warrant Agency Agreement by and between The RealReal, Inc., Computershare, Inc., and Computershare Trust Company, N.A. dated February 29, 2024 (incorporated herein by reference to Exhibit 10.43 to the Company's Annual Report on Form 10-K filed on March 1, 2024).
10.5*	Security Agreement among The RealReal, Inc., the Pledgors and GLAS Trust Company LLC, as Notes Collateral Agent, dated February 29, 2024.
31.1*	Certification of Principal Executive Officer Pursuant to Rules 13a-14(a) and 15d-14(a) under the Securities Exchange Act of 1934, as Adopted Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
31.2*	Certification of Principal Financial Officer Pursuant to Rules 13a-14(a) and 15d-14(a) under the Securities Exchange Act of 1934, as Adopted Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
32.1*	Certification of Principal Executive Officer Pursuant to 18 U.S.C. Section 1350, as Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
32.2*	Certification of Principal Financial Officer Pursuant to 18 U.S.C. Section 1350, as Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
101.INS	Inline XBRL Instance Document: the instance document does not appear in the Interactive Data File because its XBRL tags are embedded within the Inline XBRL document
101.SCH	Inline XBRL Taxonomy Extension Schema Document
101.CAL	Inline XBRL Taxonomy Extension Calculation Linkbase Document
101.DEF	Inline XBRL Taxonomy Extension Definition Linkbase Document
101.LAB	Inline XBRL Taxonomy Extension Label Linkbase Document
101.PRE	Inline XBRL Taxonomy Extension Presentation Linkbase Document
104	Inline XBRL for the cover page of this Quarterly Report on Form 10-Q, included in the Exhibit 101 Inline XBRL Document Set

* Filed herewith.

** Certain schedules and exhibits omitted pursuant to Item 601(a)(5) of Regulation S-K promulgated by the SEC. The Company agrees to furnish supplementally a copy of any omitted schedule or exhibit to the SEC upon request.

+ † Indicates management contract or compensatory plan.

SIGNATURES

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

The RealReal, Inc.

Date: **May 7, 2024** August 6, 2024

By: _____ /s/ John Koryl
John Koryl
Chief Executive Officer

Date: **May 7, 2024** August 6, 2024

By: _____ /s/ Ajay Madan Gopal
Ajay Madan Gopal
Chief Financial Officer

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Exhibit 10.5

SECURITY AGREEMENT

among

THE REALREAL, INC.

and

THE GUARANTORS NAMED HEREIN
collectively, the **Pledgors**,

and

GLAS TRUST COMPANY LLC,
as Notes Collateral Agent

Dated as of **February 29, 2024**

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SECURITY AGREEMENT

This SECURITY AGREEMENT, dated as of February 29, 2024 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time in accordance with the provisions hereof, this "Agreement"), made by the entities listed on the signature pages hereof and those additional entities that hereafter become parties hereto by executing the form of Joinder Agreement attached hereto as Exhibit A (the "Pledgors" and each, a "Pledgor"), in favor of GLAS TRUST COMPANY LLC, a New Hampshire limited liability company, as Trustee (in such capacity, together with its successors and assigns, the "Trustee") and in its capacity as notes collateral agent (in such capacity and together with any permitted successors and assigns in such capacity, the "Notes Collateral Agent") for the benefit of the Secured Parties (as hereinafter defined), as pledgee, assignee and secured party.

RECITALS:

A. Reference is made to that certain Indenture, dated as of the date hereof (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, the "Indenture"), by and among The RealReal, Inc., a Delaware corporation (the "Company") the other Guarantors from time to time party thereto (the "Guarantors" and each, individually, a "Guarantor") and GLAS TRUST COMPANY LLC as

Trustee and Notes Collateral Agent, pursuant to which the Company issued \$135,000,000 aggregate principal amount of 4.25%/8.75% PIK/Cash Senior Secured Notes due 2029, upon terms and subject to the provisions of the Indenture.

B. Each Guarantor has, pursuant to the Indenture, unconditionally guaranteed certain Secured Obligations (as hereinafter defined) as set forth in such Indenture.

C. Each Pledgor will receive substantial benefits from the execution, delivery and performance of the Obligations under the Indenture and any First Lien Priority Indebtedness Documents (as hereinafter defined) and each is, therefore, willing to enter into this Agreement.

D. This Agreement is given by each Pledgor in favor of the Notes Collateral Agent for the benefit of the Secured Parties to secure the payment and performance of all of its Secured Obligations.

E. It is a condition to the obligations of the Secured Parties to make financial accommodations to the Company and the Guarantors as provided for in the Indenture and any First Lien Priority Indebtedness Documents that each Pledgor execute and deliver this Agreement.

AGREEMENT:

NOW THEREFORE, in consideration of the foregoing premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, each Pledgor and the Notes Collateral Agent hereby agree as follows:

ARTICLE I

DEFINITIONS AND INTERPRETATION

SECTION 1.1. Definitions.

(a) Unless otherwise defined herein or in the Indenture (including, for the avoidance of doubt, Appendix A thereto), capitalized terms used herein that are defined in the UCC shall have the meanings assigned to them in the UCC; provided, that in any event, the following terms shall have the meanings assigned to them in the UCC:

"Account"; "Bank"; "Chattel Paper"; "Commercial Tort Claim"; "Commodity Account"; "Commodity Contract"; "Commodity Intermediary"; "Deposit Account"; "Documents"; "Electronic Chattel Paper"; "Equipment"; "Financial Asset"; "Fixtures"; "Goods"; "Instrument"; "Inventory"; "Letter of Credit"; "Letter-of-Credit Right"; "Money"; "Payment Intangibles"; "Securities Account"; "Securities Intermediary"; "Security"; "Security Entitlement"; "Software"; "Supporting Obligations"; and "Tangible Chattel Paper."

(b) Terms used but not otherwise defined herein that are defined in the Indenture shall have the meanings given to them in the Indenture. Section 1.03 of the Indenture shall apply herein *mutatis mutandis*.

(c) The following terms shall have the following meanings:

"After-Acquired IP Collateral" shall have the meaning assigned to such term in Section 6.4 hereof.

"Agreement" shall have the meaning assigned to such term in the Preamble hereof.

"Authorized Representative" means the Trustee with respect to the Notes Obligations, and with respect to any First Lien Priority Indebtedness, any duly authorized representative of any holder of First Lien Priority Indebtedness designated as "Authorized Representative" for such holder in a First Lien Priority Secured Party Joinder delivered to the Notes Collateral Agent.

"Books and Records" shall mean books and records (including each Pledgor's Records indicating, summarizing, or evidencing such Pledgor's assets (including the Collateral) or liabilities, each Pledgor's Records relating to such Pledgor's business operations or financial condition, and each Pledgor's goods or General Intangibles related to such information).

"Collateral" shall have the meaning assigned to such term in Section 2.1 hereof.

"Collateral Support" shall mean all property (real or personal) assigned or otherwise securing any Collateral and shall include any security agreement or other agreement granting a Lien in such real or personal property.

"Collections" shall mean all cash, checks, notes, instruments, and other items of payment (including insurance proceeds, cash proceeds of asset sales, rental proceeds, and tax refunds).

"Company" shall have the meaning assigned to such term in Recital A.

"Consignment Inventory" means any property held by a Pledgor on a consignment basis, which property is not owned by a Pledgor (and would not be reflected on a consolidated balance sheet of the Company and its Subsidiaries prepared in accordance with GAAP as owned by a Pledgor).

"Consignment Proceeds" means any proceeds from the sale of any Consignment Inventory. For the avoidance of doubt, commissions, fees or other income earned by the Pledgors in respect of consignment sales shall not constitute Consignment Proceeds.

"Control Agreement" means any springing account control agreement entered into to establish "control" (within the meaning of the UCC) over the Pledgor's Deposit Accounts or Securities Accounts established by the Pledgor, in form and substance reasonably satisfactory to the Notes Collateral Agent; *provided* that, notwithstanding anything to the contrary in the Credit Documents, no Control Agreements shall be required to be in effect for any Excluded Account.

"Copyright Security Agreement" shall mean an agreement substantially in the form of Exhibit B hereto.

"Copyrights" shall mean all of the following now owned or hereafter acquired by any Pledgor: (a) all copyrights (whether registered or unregistered), all Registrations and recordings thereof, and all applications in connection therewith, including all Registrations, recordings and applications in the United States Copyright Office or in any similar office or agency of the United States, any state or territory thereof, or any other country or any political subdivision thereof, including those listed on Schedule 1.01B to this Agreement and (b) all extensions or renewals of any copyrights or Registrations therefor, together with any and all (i) rights and privileges arising under applicable law with respect to such Pledgor's ownership of such copyrights, (ii) income, fees, royalties, damages, claims and payments now or hereafter due and/or payable to such Pledgor with respect thereto, including damages and payments for past, present or future infringements thereof, (iii) rights corresponding thereto throughout the world and (iv) rights to sue for past, present or future infringement thereof.

"Distributions" shall mean, collectively, with respect to each Pledgor, all dividends, cash, options, warrants, rights, instruments, distributions, returns of capital or principal, income, interest, profits and other property, interests (debt or equity) or proceeds, including as a result of a split, revision, reclassification or other like change of the Pledged Securities, from time to time received, receivable or otherwise distributed to such Pledgor in respect of or in exchange for any or all of the Pledged Securities or Intercompany Notes.

"Event of Default" has the meaning specified therefor in the Indenture or any First Lien Priority Indebtedness Document, as applicable.

"Excluded Accounts" has the meaning specified therefor in the Indenture.

"Excluded Assets" shall mean:

- i. [reserved];
- ii. any Consignment Inventory and any Consignment Proceeds;
- iii. motor vehicles and other assets subject to certificates of title, Letter-of-Credit Rights (except to the extent constituting supporting obligations) and Commercial Tort

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Claims; except in each case to the extent perfection can be obtained by filing of UCC financing statements;

- iv. any lease, license or other similar agreement or any property subject to a purchase money security interest, capital lease or similar arrangement permitted under the Indenture and any First Lien Priority Indebtedness Documents (if any) to the extent that a grant of a security interest therein would violate or invalidate such permitted lease, license or other agreement or purchase money arrangement, capital lease, or similar arrangement or create a right of termination in favor of any other party thereto (other than the Company or a Guarantor) after giving effect to the applicable anti-assignment provisions of the UCC and other applicable law, other than proceeds and receivables thereof, the assignment of which is expressly deemed effective under applicable law notwithstanding such prohibition;
- v. any "intent to use" Trademark applications prior to the issuance of a statement of use with respect thereto, solely to the extent that, and solely during the period in which, the grant of a security interest in such Trademark application prior to such filing and acceptance would impair or adversely affect the enforceability or validity of such Trademark application or the resulting Trademark registration;
- vi. any Equity Interests of any not-for-profit Subsidiary, captive insurance company Subsidiary or other special purpose Subsidiary of the Company designated by the Company's Board of Directors as such;
- vii. any assets to the extent a pledge thereof would (A) be prohibited by applicable law, rule or regulation after giving effect to the applicable anti-assignment provisions of the UCC and other applicable law, or contractual restriction (including, solely in the case of the Equity Interests of a Person that is not the Company, a Guarantor or a Wholly Owned Subsidiary, the organizational documents of such Person) permitted under the Indenture and any First Lien Priority Indebtedness Documents (if any) and binding on such asset on the Issue Date or on the date of the acquisition of such asset (not created in contemplation of the acquisition of such asset) (and only for so long as such restriction is in effect), in each case, after giving effect to the applicable anti-assignment provisions of the UCC or other applicable law or (B) require governmental (including regulatory) consent, approval, license or authorization (unless such consent, approval, license or authorization has been received), in each case, after giving effect to the applicable anti-assignment provisions of the UCC and other applicable law;
- viii. Margin Stock;
- ix. any assets as to which the Company reasonably determines in good faith that the costs of obtaining a security interest are excessive in relation to the value of the security afforded thereby;
- x. any leasehold interest in real property;

xi. any fee interest in real property with a Fair Market Value (as determined in good faith by the Company) of \$5,000,000 or less individually;

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xii. [reserved];

xiii. any governmental licenses, permits or state or local franchises, charters and authorizations, to the extent Liens and security interests therein are prohibited or restricted thereby, in each case, after giving effect to the applicable anti-assignment provisions of applicable law and to other applicable law;

xiv. to the extent any applicable law requires that a Subsidiary issue directors' qualifying shares, such shares or nominee or other similar shares;

xv. [reserved]; and xvi. any asset the granting of any pledge, Lien or security interest of or in which would reasonably be expected to result in material and adverse tax consequences to the Company or any of its Subsidiaries, as determined in good faith by the Company.

"First Lien Priority Indebtedness Documents" shall mean the documents governing any First Lien Priority Indebtedness (if any).

"First Lien Priority Secured Party Joinder" shall mean an agreement substantially in the form of Exhibit E hereto.

"General Intangibles" means all "general intangibles," as such term is defined in the UCC, now owned or hereafter acquired by any Pledgor, including all right, title and interest that such Pledgor may now or hereafter have in or under any contract, all payment intangibles, customer lists, licenses, rights in Intellectual Property, interests in partnerships, joint ventures and other business associations not constituting securities, permits, proprietary or confidential information, inventions (whether or not patented or patentable), technical information, procedures, designs, knowledge, know-how, Software, databases, data, skill, expertise, experience, processes, models, drawings, materials and records, Goodwill, choses in action, rights to receive tax refunds and other payments, rights to receive dividends, distributions, cash, Instruments and other property in respect of or in exchange for pledged Capital Stock and Investment Property, rights of indemnification, all Books and Records, correspondence, credit files, invoices and other papers, including without limitation all tapes, cards, computer runs and other papers and documents in the possession or under the control of such Pledgor or any computer bureau or service company from time to time acting for such Pledgor.

"Goodwill" shall mean, collectively, with respect to each Pledgor, all goodwill of such Pledgor's business connected with the use of and symbolized by any Trademark.

"Guarantor" shall have the meaning assigned to such term in Recital A.

"Impairment" shall have the meaning assigned to such term in Section 10.1(e).

"Intervening Creditor" shall have the meaning assigned to such term in Section 10.1(e).

"Indenture" shall have the meaning assigned to such term in Recital A.

"Insolvency Proceeding" shall mean (a) any voluntary or involuntary case or proceeding under any Debtor Relief Laws with respect to any Pledgor, (b) any other voluntary or involuntary insolvency, reorganization or bankruptcy case or proceeding, or any receivership, liquidation,

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reorganization or other similar case or proceeding with respect to any Pledgor or with respect to any of their respective assets, (c) any proceeding seeking the appointment of any trustee, receiver, liquidator, custodian or other insolvency official with similar powers with respect to such Person or any or all of its assets or properties, (d) any liquidation, dissolution, reorganization or winding up of any Pledgor whether voluntary or involuntary and whether or not involving insolvency or bankruptcy or (e) any assignment for the benefit of creditors or any other marshalling of assets and liabilities of any Pledgor.

“Intellectual Property” shall mean, collectively, the Patents, Trademarks, Copyrights, Trade Secrets, Intellectual Property Licenses and Goodwill.

“Intellectual Property Collateral” shall mean, collectively, the Intellectual Property that is included in the Collateral.

“Intellectual Property Licenses” shall mean, collectively, with respect to each Pledgor, all license agreements with any other party with respect to any Patent, Trademark, Copyright or Trade Secret, whether such Pledgor is a licensor or licensee, under any such license agreement, together with any and all (i) renewals, extensions, supplements and continuations thereof, (ii) income, fees, royalties, damages, claims and payments now and hereafter due and/or payable to Pledgor thereunder and with respect thereto including damages and payments for past, present or future breaches, infringements or violations of licensed intellectual property, (iii) rights, if any, granted to such Pledgor pursuant to such license agreements to sue for past, present and future breaches, infringements or violations of any Patents, Trademarks or Copyrights licensed to such Pledgor and (iv) other rights, if any, granted to such Pledgor pursuant to such license agreements to use, exploit or practice any intellectual property licensed to such Pledgor.

“Intellectual Property Security Agreement” shall mean any Copyright Security Agreement, any Patent Security Agreement and any Trademark Security Agreement, as the case may be.

“Intercompany Notes” shall mean, with respect to each Pledgor, all intercompany notes in excess of \$5,000,000 individually described in Schedule 1.01A to this Agreement and intercompany notes hereafter acquired by such Pledgor and all certificates, instruments or agreements evidencing such intercompany notes, and all assignments, amendments, restatements, supplements, extensions, renewals, replacements or modifications thereof to the extent permitted pursuant to the terms hereof.

“Investment Property” shall mean a security, whether certificated or uncertificated, Security Entitlement, Securities Account, Commodity Contract or Commodity Account, excluding, however, the Securities Collateral.

“Notes Collateral Agent” shall have the meaning assigned to such term in the Preamble hereof.

“Notes Secured Party” shall mean the Trustee and the holders of the 4.25%/8.75% PIK/Cash Senior Secured Notes due 2029 issued pursuant to the Indenture.

“Patent Security Agreement” shall mean an agreement substantially in the form of Exhibit C hereto.

“Patents” shall mean all of the following, now owned or hereafter acquired by any Pledgor: (a) all patents and industrial designs of the United States or of any other country, all issuances and recordings thereof, and all applications for patent or industrial designs of the United States or of any

other country, including issuances, recordings and applications in the United States Patent and Trademark Office or in any similar office or agency of the United States, any state or territory, or any other country or political subdivision thereof, including those set forth on Schedule 1.01C to this Agreement and (b) all reissues, reexaminations, divisions, continuations, continuations-in-part or extensions thereof and amendments thereto, together with any and all (i) rights and privileges arising under applicable law with respect to such Pledgor's ownership of any such patents or industrial designs, (ii) inventions, designs and improvements described or claimed therein, (iii) income, fees, royalties, damages, claims and payments now or hereafter due and/or payable to Pledgor thereunder and with respect thereto including damages and payments for past, present or future infringements thereof, (iv) rights corresponding thereto throughout the world and (v) rights to sue for past, present or future infringements thereof.

"Permitted Liens" means all Liens permitted by the Indenture and not prohibited by any First Lien Priority Indebtedness Document.

"Pledged Securities" shall mean, collectively, with respect to each Pledgor, (i) all issued and outstanding Capital Stock set forth on Schedule 1.01D to this Agreement as being owned by such Pledgor, and all options, warrants, rights, agreements and additional Capital Stock of whatever class of any such issuer acquired by such Pledgor (including by issuance), together with all rights, privileges, authority and powers of such Pledgor relating to such Capital Stock in each such issuer or under any organizational document of each such issuer, and the certificates, instruments and agreements representing such Capital Stock and any and all interest of such Pledgor in the entries on the books of any financial intermediary pertaining to such Capital Stock, (ii) all Capital Stock of any issuer, which Capital Stock is hereafter acquired by such Pledgor (including by issuance) and all options, warrants, rights, agreements and additional Capital Stock of whatever class of any such issuer acquired by such Pledgor (including by issuance), together with all rights, privileges, authority and powers of such Pledgor relating to such Capital Stock or under any organizational document of any such issuer, and the certificates, instruments and agreements representing such Capital Stock and any and all interest of such Pledgor in the entries on the books of any financial intermediary pertaining to such Capital Stock, from time to time acquired by such Pledgor in any manner, and (iii) all Capital Stock issued in respect of the Capital Stock referred to in clause (i) or (ii) above upon any consolidation or merger of any issuer of such Capital Stock; *provided* that the Pledged Securities shall not include any Excluded Assets.

"Pledgor" shall have the meaning assigned to such term in the Preamble hereof.

"Proceeds" shall have the meaning assigned to such term in Article 9 of the UCC and, in any event, shall also include, but not be limited to, (i) any and all proceeds of any insurance, indemnity, warranty or guaranty payable to the Notes Collateral Agent or any Pledgor from time to time with respect to any of the Collateral, (ii) any and all payments (in any form whatsoever) made or due and payable to any Pledgor from time to time in connection with any requisition, confiscation, condemnation, seizure or forfeiture of all or any part of the Collateral by any governmental authority (or any Person acting under color of governmental authority) and (iii) any and all other amounts from time to time paid or payable under or in connection with any of the Collateral.

"Receivables" shall mean all (i) Accounts, (ii) Chattel Paper, (iii) Payment Intangibles, (iv) General Intangibles, (v) Instruments and (vi) other rights to payment, whether or not earned by performance, for goods or other property sold, leased, licensed, assigned or otherwise disposed of, or services rendered or to be rendered, regardless of how classified under the UCC together with all of Pledgor's rights, if any, in any goods or other property giving rise to such right to payment and all Collateral Support and Supporting Obligations related thereto and all Records relating thereto.

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"Records" means information that is inscribed on a tangible medium or which is stored in an electronic or other medium and is retrievable in perceivable form.

"Registered" means issued by, registered with, renewed by or the subject of a pending application before any governmental authority or Internet domain name registrar; and **"Registration"** shall mean the product thereof.

"Secured Obligations" means, collectively, (a) the Notes Obligations and (b) the Obligations in respect of the First Lien Priority Indebtedness and the First Lien Priority Indebtedness Documents that have been designated as Secured Obligations pursuant to Section 11.15.

"Secured Parties" shall mean (a) the Notes Secured Parties and (b) from and after the designation of any First Lien Priority Indebtedness as Secured Obligations pursuant to Section 11.15, the holders of such First Lien Priority Indebtedness and any trustees, collateral agents or other representatives with respect to, First Lien Priority Indebtedness, and, in each case, any successor of any of the foregoing.

"Securities Act" means the Securities Act of 1933, as from time to time amended.

"Securities Collateral" shall mean, collectively, the Pledged Securities, the Intercompany Notes and the Distributions.

"Trade Secrets" shall mean all of the following now owned or hereafter acquired by any Pledgor: (a) all rights in all trade secrets, know how, technology (whether patented or not), Software (including source code and object code), data and databases, Internet web sites, customer and supplier lists, proprietary information, methods, procedures, formulae, descriptions, compositions, technical data, drawings, specifications, name plates, catalogs, confidential information and the right to limit the use or disclosure thereof by any Person, pricing and cost information, business and marketing plans and proposals, and other proprietary information, together with any and all (i) rights and privileges arising under applicable law with respect to such Pledgor's ownership of the foregoing, (ii) income, fees, royalties, damages, claims and payments now or hereafter due and/or payable to such Pledgor with respect thereto, including damages and payments for past, present or future infringements, misappropriations or violations thereof, (iii) rights corresponding thereto throughout the world and (iv) rights to sue for past, present or future infringement, misappropriation or violation thereof.

"Trademark Security Agreement" shall mean an agreement substantially in the form of Exhibit D hereto.

"Trademarks" shall mean all of the following now owned or hereafter acquired by any Pledgor: (a) all trademarks, trade names, domain names, corporate names, business names, trade dress, service marks, logos, domain names, other source or business identifiers, all Registrations and recordings thereof; and all applications in connection therewith, including Registrations, recordings and applications in the United States Patent and Trademark Office or in any similar office or agency of the United States, any state or territory thereof, or any other country or any political subdivision thereof including those set forth on Schedule 1.01E to this Agreement; (b) all renewals thereof; and (c) all Goodwill associated with any of the foregoing, together with any and all (i) rights and privileges arising under applicable law with respect to such Pledgor's ownership or use of the foregoing, (ii) income, fees, royalties, damages and payments now and hereafter due and/or payable thereunder and with respect thereto, including damages, claims and payments for past, present or future infringements, dilutions or violations thereof, (iii) rights corresponding thereto throughout the world and (iv) rights to sue for past, present and future infringement, dilutions or violations thereof.

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ARTICLE II

GRANT OF SECURITY AND OBLIGATIONS

SECTION 2.1. Grant of Security Interest

. As collateral security for the payment and performance in full of all of the Secured Obligations, each Pledgor hereby pledges and grants to the Notes Collateral Agent, for the benefit of the Secured Parties, a Lien on and security interest in all of the right, title and interest of such Pledgor in, to and under the following property, wherever located, and whether now existing or hereafter arising or acquired from time to time (collectively, and in each case, the "Collateral"):

(i) all Accounts;

(ii) all Equipment, Goods, Inventory and Fixtures;

(iii) all Documents, Instruments and Chattel Paper;

(iv) all Securities Collateral;

(v) all Investment Property;

(vi) all Intellectual Property;

(vii) all General Intangibles;

(viii) all Money, Deposit Accounts and Securities Accounts;

(ix) all Supporting Obligations;

(x) the Commercial Tort Claims set forth on Schedule 3.4(e) from time to time;

(xi) Letters of Credit and Letter-of-Credit Rights;

(xii) all Books and Records relating to the Collateral; and

(xiii) to the extent not covered by clauses (i) through (xii) of this sentence, all other personal property of such Pledgor, whether tangible or intangible, and all accessions to, substitutions and replacements for, Proceeds and products of the foregoing, together with all Books and Records, customer lists, credit files, computer files, programs, printouts and other computer materials and records related thereto and any General Intangibles at any time evidencing or relating to any of the foregoing and all collateral security and guarantees given by any Person with respect to any of the foregoing. Without limiting the generality of the foregoing, the term "Proceeds" includes whatever is receivable or received when Investment Property, Securities Collateral or proceeds are sold, exchanged, collected, or otherwise disposed of, whether such disposition is voluntary or involuntary, and includes proceeds of any indemnity or guaranty payable to any Pledgor or Notes Collateral Agent from time to time with respect to any of the Investment Property.

Notwithstanding anything to the contrary contained in this Section 2.1, the Lien and security interest created by this Agreement shall not attach to, and the term "Collateral" shall not include, any Excluded Assets.

SECTION 2.2. Security for Obligations

. The security interest created hereby secures the payment and performance of the Secured Obligations, whether now existing or arising hereafter.

SECTION 2.3. Filings

. (a) Each Pledgor hereby agrees (to the extent necessary or requested by the Notes Collateral Agent in order to perfect or protect the Notes Collateral Agent's security interest in the Collateral) to file (and irrevocably authorizes the Notes Collateral Agent (without imposing any obligation on the Notes Collateral Agent) to file) at any time and from time to time, in any relevant jurisdiction any financing statements (including fixture filings) and amendments thereto that contain the information required by Article 9 of the UCC of each applicable jurisdiction for filing of any financing statement or amendment relating to the Collateral, including (i) whether such Pledgor is an organization, the type of organization and any organizational identification number issued to such Pledgor, (ii) any financing or continuation statements or other documents that are reasonably necessary to obtain or maintain the Notes Collateral Agent's security interest without the signature of such Pledgor where permitted by law, including

the filing of a financing statement describing the Collateral as "all assets now existing or hereafter acquired" or words of similar meaning and (iii) in the case of a financing statement filed as a fixture filing, a sufficient description of the real property to which such Collateral relates. Each Pledgor agrees to provide all information described in the immediately preceding sentence to the Notes Collateral Agent promptly upon request by the Notes Collateral Agent, and agrees to deliver copies of all financing statements and amendments thereto to the Notes Collateral Agent promptly after filing.

(b) Each Pledgor hereby further agrees to file and record (and authorizes the Notes Collateral Agent to file and record (without imposing any obligation on the Notes Collateral Agent to do so)), at any time and from time to time, with the United States Patent and Trademark Office or United States Copyright Office (or any successor office), the Copyright Security Agreement, the Patent Security Agreement and the Trademark Security Agreement, or other appropriate short-form documents for the purpose of perfecting, confirming, continuing, enforcing or protecting the security interest granted by such Pledgor hereunder, without the signature of such Pledgor, and naming such Pledgor, as debtor, and the Notes Collateral Agent, as secured party.

ARTICLE III

PERFECTION; SUPPLEMENTS; FURTHER ASSURANCES; USE OF COLLATERAL

SECTION 3.1. Delivery of Certificated Securities Collateral

Each Pledgor represents and warrants that all certificates, agreements or instruments representing or evidencing the Securities Collateral in existence on the date hereof have been delivered to the Notes Collateral Agent in suitable form for transfer by delivery or accompanied by duly executed instruments of transfer or assignment in blank and that the Notes Collateral Agent has a perfected security interest

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therein (subject to the provisions of the Indenture to the extent it permits delivery of Securities Collateral after the date hereof). Each Pledgor hereby agrees that all certificates, agreements or instruments representing or evidencing Securities Collateral constituting Collateral acquired by such Pledgor after the date hereof shall promptly (but in any event within fifteen (15) Business Days after receipt thereof by such Pledgor or such later date as the Notes Collateral Agent may agree in its sole discretion) be delivered to and held by or on behalf of the Notes Collateral Agent pursuant hereto. All certificated Securities Collateral shall be in suitable form for transfer by delivery or shall be accompanied by duly executed instruments of transfer or assignment in blank. The Notes Collateral Agent shall have the right (but not the obligation), at any time upon the occurrence and during the continuance of any Event of Default, and upon notice to the applicable Pledgor (to the extent practicable), to endorse, assign or otherwise transfer to or to register in the name of the Notes Collateral Agent or any of its nominees or endorse for negotiation any or all of the Securities Collateral, without any indication that such Securities Collateral is subject to the security interest hereunder. In addition, upon the occurrence and during the continuance of an Event of Default, the Notes Collateral Agent shall have the right (but not the obligation) at any time to exchange certificates representing or evidencing Securities Collateral for certificates of smaller or larger denominations.

SECTION 3.2. Perfection of Uncertificated Securities Collateral

Each Pledgor hereby agrees that if any of the Pledged Securities constituting Collateral are Securities, are issued to such Pledgor or its nominee directly by a Subsidiary of such Pledgor, and are not evidenced by certificates of ownership, then each applicable Pledgor shall (upon the occurrence and during the continuance of an Event of Default), to the extent permitted by applicable law and if necessary or desirable to perfect a Lien in such Pledged Securities, either (i) cause such pledge to be recorded on the equityholder register or the books of the issuer, execute any customary pledge forms or other documents necessary or appropriate to complete the pledge and give the Notes Collateral Agent the right (without imposing any obligation) to transfer such Pledged Securities under the terms hereof, or (ii) cause the issuer to agree to comply with instructions from the Notes Collateral Agent as to such Securities, without further consent of any Pledgor or such nominee. In the case of each Pledgor which is an issuer of Pledged Securities, such Pledgor agrees (i) to be bound by the terms of this Agreement relating to the Pledged Securities issued by it and

will comply with such terms insofar as such terms are applicable to it and (ii) that upon the occurrence and during the continuance of an Event of Default it will comply with instructions of the Notes Collateral Agent with respect to the applicable Pledged Securities without further consent by the applicable Pledgor.

SECTION 3.3. Financing Statements and Other Filings; Maintenance of Perfected Security Interest

Each Pledgor represents and warrants that all financing statements, agreements, instruments and other documents necessary to perfect the security interest granted by it to the Notes Collateral Agent in respect of the Collateral, to the extent that such Collateral may be perfected by (x) filing, recording or registering a financing statement in the United States (or any political subdivision thereof) pursuant to the Uniform Commercial Code or other applicable law in such jurisdictions or (y) the receipt and recording of the Intellectual Property Security Agreements with the United States Patent and Trademark Office and the United States Copyright Office, as applicable, and in each case other than (i) with respect to Collateral subject to any certificate of title statute, notations of Notes Collateral Agent's Lien on such certificates of title, (ii) Deposit Accounts, (iii) Intellectual Property registered outside of the United States and (iv) Collateral the perfection of which is to occur after the Issue Date as provided herein or in the Indenture (but only until such time as such perfection is required hereunder or thereunder), have been delivered to

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the Notes Collateral Agent in completed and, to the extent necessary or appropriate, duly executed form and, where necessary or appropriate, filed in the applicable governmental, municipal or other office. Each Pledgor agrees that at the sole cost and expense of the Pledgors, such Pledgor will, to the extent consistent with any Junior Lien Priority Intercreditor Agreement, take such actions as are reasonably necessary or reasonably requested by the Notes Collateral Agent to maintain, subject to the provisions of the Indenture, the security interest created by this Agreement in the Collateral as a perfected security interest.

SECTION 3.4. Other Actions

In order to further ensure the attachment and perfection of, and the ability of the Notes Collateral Agent to enforce, the Notes Collateral Agent's security interest in the Collateral, each Pledgor represents and warrants (as to itself) as follows and agrees, in each case at such Pledgor's own expense, to take the following actions with respect to the following Collateral:

(a) Instruments and Tangible Chattel Paper. As of the date hereof, no amounts payable under or in connection with any of the Collateral with a value in excess of \$5,000,000 individually are evidenced by any Instrument or Tangible Chattel Paper other than such Instruments and Tangible Chattel Paper listed in Schedule 3.4(a) to this Agreement. Each Pledgor shall promptly upon request of the Notes Collateral Agent (which request the Notes Collateral Agent shall have no obligation to make) made at any time during the continuance of an Event of Default, endorse, assign and deliver to the Notes Collateral Agent any Instrument or Tangible Chattel Paper with a value in excess of \$5,000,000 individually that constitutes Collateral (other than checks received and processed in the ordinary course of business), accompanied by such instruments of transfer or assignment duly executed in blank as are necessary to grant the Notes Collateral Agent control of such Instrument or Tangible Paper or that the Notes Collateral Agent may from time to time reasonably specify. Each Pledgor shall not deliver any Instrument or Tangible Chattel Paper with a value in excess of \$5,000,000 individually to any third party.

(b) [Reserved]

(c) the Pledgors shall bear the investment risk with respect to the Investment Property and Pledged Securities, and the risk of loss of, damage to, or the destruction of the Investment Property and Pledged Securities, whether in the possession of, or maintained as a Security Entitlement or deposit by, or subject to the control of, the Notes Collateral Agent, a Securities Intermediary, a Commodity Intermediary, any Pledgor or any other Person. The Notes Collateral Agent shall not bear any risk, liability or responsibility with regard to any such loss, damage or the destruction.

(d) [Reserved].

(e) **Commercial Tort Claims.** As of the date hereof, no Pledgor has any Commercial Tort Claim having a value, or involving an asserted claim, that exceeds \$5,000,000 in amount individually, except as set forth on Schedule 3.4(e) to this Agreement. If any Pledgor obtains a Commercial Tort Claim having a value, or involving an asserted claim, in an amount that exceeds \$5,000,000 individually then the applicable Pledgor or Pledgors shall promptly notify Notes Collateral Agent upon obtaining such Commercial Tort Claim and, promptly, amend Schedule 3.4(e) to this Agreement to describe such Commercial Tort Claim in a manner that reasonably identifies such Commercial Tort Claim and agrees to file and hereby authorizes the filing of

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additional financing statements or amendments to existing financing statements describing such Commercial Tort Claim.

SECTION 3.5. Joinder of Additional Pledgors

. The Pledgors shall cause each Subsidiary of the Company (other than an Excluded Subsidiary) that, from time to time, after the date hereof shall be required to pledge any assets to the Notes Collateral Agent for the benefit of the Secured Parties pursuant to the provisions of the Indenture and any First Lien Priority Indebtedness Document, to execute and deliver to the Notes Collateral Agent a Joinder Agreement substantially in the form of Exhibit A hereto and such other documentation as is necessary for the purposes of this Agreement and as the Notes Collateral Agent may reasonably request, and, upon such execution and delivery, such Subsidiary shall constitute a "Pledgor" for all purposes hereunder with the same force and effect as if originally named as a Pledgor herein. The execution and delivery of such Joinder Agreement shall not require the consent of any other Pledgor hereunder. The rights and obligations of each Pledgor hereunder shall remain in full force and effect notwithstanding the addition of any new Pledgor as a party to this Agreement.

SECTION 3.6. Supplements; Further Assurances

. Subject to the express exclusions of Section 3.8, each Pledgor shall take such further actions, and execute and/or deliver to the Notes Collateral Agent such additional financing statements, amendments, assignments, agreements, supplements, powers and instruments, as are necessary or that the Notes Collateral Agent may (without the Notes Collateral Agent being obligated to do so) in its reasonable judgment deem necessary or appropriate in order to create, perfect, preserve and protect the Lien and security interest in the Collateral as provided herein and the rights and interests granted to the Notes Collateral Agent hereunder, to carry into effect the purposes hereof or better to assure and confirm the validity, enforceability and priority of the Notes Collateral Agent's security interest in the Collateral or permit the Notes Collateral Agent to exercise and enforce its rights, powers and remedies hereunder with respect to any Collateral, including the filing of financing statements, continuation statements and other documents under the UCC (or other similar laws) in effect in any United States jurisdiction, and in such offices in the United States wherever required by law to perfect, continue and maintain the validity, enforceability and priority of the Notes Collateral Agent's security interest in the Collateral and to preserve the other rights and interests granted to the Notes Collateral Agent hereunder, as against third parties, with respect to the Collateral, including filings with the United States Patent and Trademark Office and the United States Copyright Office. Without limiting the generality of the foregoing, but subject to applicable law, each Pledgor shall make, execute, endorse, acknowledge, file or refile and/or deliver to the Notes Collateral Agent from time to time upon reasonable request by the Notes Collateral Agent (without the Notes Collateral Agent being obligated to make any such request) such lists, schedules, descriptions and designations of the Collateral, copies of warehouse receipts, receipts in the nature of warehouse receipts, bills of lading, documents of title, vouchers, invoices, schedules, confirmatory assignments, supplements, additional security agreements, conveyances, financing statements, transfer endorsements, powers of attorney, certificates, reports and other assurances or instruments as the Notes Collateral Agent shall reasonably request. If an Event of Default has occurred and is continuing, the Notes Collateral Agent may (but shall not be obligated to) institute and maintain, in its own name or in the name of any Pledgor, such suits and proceedings as the Notes Collateral Agent may be advised by counsel shall be necessary or expedient to prevent any impairment of the Notes Collateral Agent's security interest in or the perfection thereof in the Collateral. All of the foregoing shall be at the sole cost and reasonable expense of the Pledgors.

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SECTION 3.7. Notes Collateral Agent's Right to Perform Contracts, Exercise Rights, etc.

Upon the occurrence and during the continuance of an Event of Default, the Notes Collateral Agent (or its designee) (a) shall have the right (but not the obligation), to the extent permitted under and subject to the terms and conditions of any applicable Intellectual Property Licenses, to exercise any Pledgor's rights under Intellectual Property Licenses (including the right to use any intellectual property licensed to such Pledgor pursuant to such Intellectual Property Licenses as such Pledgor's agent, in connection with the enforcement of Notes Collateral Agent's rights hereunder, including the right to manufacture, have manufactured, prepare for sale, advertise and sell any and all Inventory, Goods and Equipment now or hereafter owned by any Pledgor and now or hereafter covered by such licenses), and (b) shall have the right (but not the obligation) to request that any Capital Stock that is pledged hereunder be registered in the name of Notes Collateral Agent or any of its nominees.

SECTION 3.8. Certain Excluded Perfection Actions

. Notwithstanding anything to the contrary herein, for the avoidance of doubt, no Pledgor shall be required to (a) take or perform any action to perfect the Notes Collateral Agent's security interest in Collateral subject to certificate of title statute except to the extent such Collateral may be perfected by the filing of an appropriate UCC financing statement, (b) enter into control agreements with respect to Commodity Accounts of the Pledgors, (c) obtain bailee agreements or landlord or mortgagee waivers, (d) send, prior to the occurrence of an Event of Default, any notices to account debtors or other contractual third parties or (e) enter into foreign-law governed security documents or take or perform any action to perfect security interests under foreign law except as contemplated in connection with adding an Elective Guarantor as a Guarantor under the Indenture.

ARTICLE IV

REPRESENTATIONS, WARRANTIES AND COVENANTS

Each Pledgor represents, warrants and covenants as follows:

SECTION 4.1. Title

. Except for the security interest granted to the Notes Collateral Agent for the benefit of the Secured Parties pursuant to this Agreement and any other Permitted Liens, such Pledgor owns and/or has rights and, as to Collateral acquired by it from time to time after the date hereof, will own and/or have rights in each item of Collateral pledged by it hereunder, free and clear of any and all Liens.

SECTION 4.2. Validity of Security Interest

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(a) The Lien on and security interest in the Collateral granted to the Notes Collateral Agent for the benefit of the Secured Parties hereunder constitutes (a) a legal and valid security interest in all the Collateral securing the payment and performance of the Secured Obligations, and (b) upon the filing of a UCC financing statement with the applicable office describing the Collateral, a perfected Lien on and security interest in all the Collateral to the extent that a security interest can be perfected therein by the filing of a UCC financing statement. The security interest granted to the Notes Collateral Agent for

the benefit of the Secured Parties pursuant to this Agreement in and on the Collateral will at all times, constitute a perfected (to the extent such security interest can be perfected by the filing of a UCC financing statement), continuing security interest therein.

SECTION 4.3. Defense of Claims; Transferability of Collateral

. Subject to the ability of each Pledgor to dispose of Collateral in accordance with the Indenture and any First Lien Priority Indebtedness Documents, each Pledgor shall, at its own cost and reasonable expense, use commercially reasonable efforts to defend title to the Collateral pledged by it hereunder and the security interest therein and the Lien thereon granted to the Notes Collateral Agent and the priority thereof against all claims and demands of all Persons, at its own cost and expense, at any time claiming any interest therein adverse to the Notes Collateral Agent or any other Secured Party other than Permitted Liens.

SECTION 4.4. Other Financing Statements

. No Pledgor has filed, nor authorized any third party to file, any valid or effective financing statement (or similar statement, instrument of registration or public notice under the law of any jurisdiction) covering or purporting to cover any interest of any kind in the Collateral, except (a) such as have been filed in favor of the Notes Collateral Agent pursuant to this Agreement and (b) in respect of Permitted Liens. No Pledgor shall execute or authorize to be filed in any public office any financing statement (or similar statement, instrument of registration or public notice under the law of any jurisdiction) relating to any Collateral, except financing statements and other statements and instruments filed or to be filed in respect of and covering the security interests granted by such Pledgor solely to the extent expressly authorized and permitted under the Indenture or this Agreement and not prohibited by any First Lien Priority Indebtedness Document.

SECTION 4.5. [Reserved]

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SECTION 4.6. Due Authorization and Issuance

. All of the Pledged Securities existing on the date hereof issued by a Subsidiary of the Company have been, and to the extent any Pledged Securities issued by a Subsidiary of the Company are hereafter issued, such Pledged Securities will be, upon such issuance, duly authorized, validly issued and fully paid and non-assessable to the extent applicable.

SECTION 4.7. Collateral

. As of the date hereof, all information set forth herein, including the schedules hereto, and all information and schedules in that certain Perfection Certificate dated as of the date hereof among the Company and the Guarantors and delivered to the Notes Collateral Agent, in each case relating to the Collateral, is accurate and complete in all material respects.

SECTION 4.8. Insurance

. In the event that the proceeds of any insurance claim are paid to any Pledgor after the Notes Collateral Agent has exercised its right to foreclose after an Event of Default (and while such Event of Default is outstanding), such net cash proceeds shall be held in trust for the benefit of the Notes Collateral Agent

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and immediately after receipt thereof shall be paid to the Notes Collateral Agent for application in accordance with the Indenture.

SECTION 4.9. Chief Executive Office; Change of Name; Jurisdiction of Organization; Standing Timber and Timber to be Cut; etc.

Each Pledgor agrees to promptly provide the Notes Collateral Agent with certified organizational documents reflecting any of the changes described in Section [4.02(d)] of the Indenture, to the extent applicable, and take all action necessary (including filings under the UCC) or reasonably requested by the Notes Collateral Agent (which request the Notes Collateral Agent shall have no obligation to make) to maintain the perfection and priority of the security interest of the Notes Collateral Agent for the benefit of the Secured Parties in the Collateral.

SECTION 4.10. Deposit Accounts and Securities Accounts. Each Pledgor hereby represents and warrants, on the date hereof, that (i) Schedule 4.3 sets forth all of the Deposit Accounts and Securities Accounts owned by such Pledgor as of the date hereof and (ii) such Pledgor does not own any Commodity Accounts.

ARTICLE V

CERTAIN PROVISIONS CONCERNING SECURITIES COLLATERAL

SECTION 5.1. [Reserved]

SECTION 5.2. Voting Rights; Distributions; etc. (a) So long as no Event of Default shall have occurred and be continuing:

(i) Each Pledgor shall be entitled to exercise any and all voting and other consensual rights pertaining to the Securities Collateral or any part thereof for any purpose not inconsistent with the terms or purposes hereof, the Indenture, any First Lien Priority Indebtedness Documents or any other document evidencing the Secured Obligations.

(ii) Each Pledgor shall be entitled to receive and retain, and to utilize free and clear of the Lien and security interest granted herein, any and all Distributions, but only if and to the extent made in accordance with the provisions of the Indenture and any First Lien Priority Indebtedness Document.

(b) Upon (x) the occurrence and during the continuance of any Event of Default and (y) receipt of written notice from the Notes Collateral Agent stating its intent to exercise its rights and remedies under this Section 5.2 (which the Notes Collateral Agent shall have no obligation to deliver):

(i) All rights of each Pledgor to exercise the voting and other consensual rights it would otherwise be entitled to exercise pursuant to Section 5.2(a)(i) hereof shall immediately cease, and all such rights shall thereupon become vested in the Notes Collateral Agent, which shall thereupon have the sole right (but not the obligation) to exercise such voting and other consensual rights.

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(ii) All rights of each Pledgor to receive Distributions which it would otherwise be authorized to receive and retain pursuant to Section 5.2(a)(ii) hereof shall immediately cease and all such rights shall thereupon become vested in the Notes Collateral Agent, which shall thereupon have the sole right (but not the obligation) to receive and hold as Collateral such Distributions; provided that, notwithstanding the foregoing, this clause (b)(ii) shall not be deemed to prohibit or restrict such Pledgor from receiving Distributions which are otherwise permitted to be made under the Indenture and not prohibited by any First Lien Priority Indebtedness Document during the occurrence and continuance of an Event of Default.

(c) After all Events of Default have ceased to be continuing or have been waived and the Pledgor has delivered to the Notes Collateral Agent an officer's certificate to that effect, the Pledgor shall have the right to exercise the voting and other rights pertaining to the Securities Collateral and shall be entitled to receive and retain, and to utilize free and clear of the security interest granted herein, any and all Distributions that the Pledgor would otherwise be entitled to exercise and receive pursuant to the terms of Section 5.2(a).

(d) Each Pledgor shall, at its sole cost and expense, from time to time execute and deliver to the Notes Collateral Agent all appropriate instruments (including any that the Notes Collateral Agent may (but shall not be obligated to) reasonably request) in order to permit the Notes Collateral Agent to exercise the voting and other rights which it may (without obligation) be entitled to exercise pursuant to Section 5.2(b)(i) hereof and to receive all Distributions which it may (without obligation) be entitled to receive under Section 5.2(b)(ii) hereof.

(e) All Distributions which are received by any Pledgor contrary to the provisions of Section 5.2(b)(ii) hereof shall be received for the benefit of the Notes Collateral Agent, be segregated from other funds of such Pledgor and promptly be paid over to the Notes Collateral Agent as Collateral in the same form as so received (with any necessary endorsement).

SECTION 5.3. Defaults, etc

Each Pledgor hereby represents and warrants that, as of the date hereof, (i) such Pledgor is not in default in the payment of any portion of any mandatory capital contribution, if any, required to be made under any agreement to which such Pledgor is a party relating to the Pledged Securities pledged by it, and such Pledgor is not in violation of any other provisions of any such agreement to which such Pledgor is a party, or otherwise in default or violation thereunder, (ii) no Securities Collateral pledged by such Pledgor is subject to any defense, offset or counterclaim, nor have any of the foregoing been asserted or alleged against such Pledgor by any Person with respect thereto, and (iii) there are no certificates, instruments, documents or other writings (other than the organizational documents and certificates representing such Pledged Securities that have been delivered to the Notes Collateral Agent) which evidence any Pledged Securities of such Pledgor.

SECTION 5.4. Certain Agreements of Pledgors As Issuers and Holders of Capital Stock.

(a) In the case of each Pledgor which is an issuer of Securities Collateral, such Pledgor agrees to be bound by the terms of this Agreement relating to the Securities Collateral issued by it and will comply with such terms insofar as such terms are applicable to it.

(b) In the case of each Pledgor which is a partner, shareholder or member, as the case may be, in a partnership, limited liability company or other entity, such Pledgor hereby consents to the extent required by the applicable organizational document to the pledge by each other Pledgor, pursuant

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to the terms hereof, of the Pledged Securities in such partnership, limited liability company or other entity and, upon the occurrence and during the continuance of an Event of Default, (i) to the transfer of such Pledged Securities to the Notes Collateral Agent or its nominee and to the substitution of the Notes Collateral Agent or its nominee as a substituted partner, shareholder or member in such partnership, limited liability company or other entity with all the rights, powers and duties of a general partner, limited partner, shareholder or member, as the case may be and (ii) notwithstanding Section 5.4(e), upon request by the Notes Collateral Agent (which request the Notes Collateral Agent shall have no obligation to make), to (A) cause the organizational documents of each such issuer to be amended to provide that such Pledged Securities shall be treated as "securities" for purposes of the UCC and (B) cause such Pledged Securities to become certificated and delivered to the Notes Collateral Agent in accordance with the provisions of Section 3.1.

(c) No Pledgor shall make or consent to any amendment or other modification or waiver with respect to any Pledged Securities or organizational document related thereto, or enter into any agreement or permit to exist any restriction with respect to any Pledged Securities if the same is prohibited pursuant to the Indenture or any First Lien Priority Indebtedness Documents. If any partnership interest or limited liability company interest constituting Pledged Securities held by any Pledgor is not represented by a certificate and: (i) is a Security, such Pledgor shall not permit any issuer of such partnership interests or limited liability company interests to enter into any agreement with any Person, other than the Notes Collateral Agent, whereby such issuer effectively delivers "control" of such partnership interests or limited liability company interests (as applicable) under the UCC or (ii) is not a Security, such Pledgor shall not allow such partnership interests or limited liability company interests (as applicable) to become Securities unless such Pledgor complies with the procedures set forth in Section 3.1.

(d) Each Pledgor agrees that it will obtain all necessary approvals and making all necessary filings under federal, state or local law to effect the perfection of the security interest on the Pledged Securities or to effect any sale or transfer thereof.

(e) As to all Pledged Securities comprising of limited liability company or partnership interests, issued under any organizational documents related thereto, each Pledgor hereby covenants that the Pledged Securities issued pursuant to such agreement (i) are not and shall not be dealt in or traded on securities exchanges or in securities markets, (ii) do not and will not constitute investment company securities, and (iii) are not and will not be held by such Pledgor in a Securities Account.

SECTION 5.5. Deposit Accounts and Security Accounts.

Each Pledgor covenants and agrees that for any Collateral consisting of a Deposit Account or Securities Account established by such Pledgor, such Pledgor shall use commercially reasonable efforts to cause the bank or securities intermediary with which such Deposit Account or Securities Account is maintained to execute and deliver to the Notes Collateral Agent, (i) for any Deposit Account or Securities Account established on or prior to the Issue Date, within 90 days of the Issue Date or (ii) for any Deposit Account or Securities Account established after the Issue Date, within 90 days after the establishment of such Deposit Account or Securities Account, a Control Agreement (in each case, as such date may be extended from time to time by the Notes Collateral Agent, in its sole discretion).

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ARTICLE VI

CERTAIN PROVISIONS CONCERNING INTELLECTUAL PROPERTY COLLATERAL

SECTION 6.1. Grant of Intellectual Property License

Solely for the purpose of enabling the Notes Collateral Agent, during the continuance of an Event of Default, to exercise rights and remedies under Article IX hereof, each Pledgor hereby grants to the Notes Collateral Agent, to the extent such Pledgor is permitted to grant such license and effective only during the continuance of an Event of Default, an irrevocable, non-exclusive, royalty-free (and free of any other obligation of payment) license worldwide to use, license or sublicense the Intellectual Property Collateral now owned or hereafter acquired by such Pledgor, wherever the same may be located, but subject, in the case of Trademarks, to sufficient rights to quality control and inspection in favor of such Pledgor to avoid the risk of invalidation of such Trademarks. To the extent permitted under applicable law, other than as may be prohibited by such Pledgor's then-existing contractual obligations, such license shall include access to all media in which any of the licensed items may be recorded or stored and to all computer programs used for the compilation or printout thereof. The use of such license by the Notes Collateral Agent may (but shall not be obligated to) be exercised at the option of the Notes Collateral Agent only upon the occurrence and during the continuance of an Event of Default. Any license, sublicense or other transaction entered into by the Notes Collateral Agent in accordance with the foregoing will be binding upon the applicable Pledgor and survive any cure of such Event of Default. In connection with the rights and remedies of the Notes Collateral Agent pursuant to and in accordance with Article IX hereof, each Pledgor hereby irrevocably (during the term of this Agreement) appoints and designates the Notes Collateral Agent as its designee and agent, and authorizes the Notes Collateral Agent to act as its designee and agent, solely upon and during the continuance of an Event of Default, for purposes of selling any Inventory, Equipment or other Goods of such Pledgor under the terms of any Intellectual Property License, whether pursuant to any sell-off rights provided for therein or otherwise and for purposes of taking any other action that such Pledgor may be entitled to take for the realization on any assets of such Pledgor under any Intellectual Property License. The foregoing, and any action by the Notes Collateral Agent as such designee and agent, shall not be construed to constitute the assumption by the Notes Collateral Agent of any duties, obligations or liabilities of any Pledgor under any such Intellectual Property License or to cause the Notes Collateral Agent to have any such duties, obligations or liabilities.

SECTION 6.2. [Reserved].

SECTION 6.3. [Reserved]

SECTION 6.4. After-Acquired IP Collateral

If any Pledgor shall at any time after the date hereof (i) obtain any additional Intellectual Property or rights to any Intellectual Property, other than Intellectual Property constituting Excluded Assets, or (ii) become entitled to the benefit of any additional Intellectual Property, other than Intellectual Property constituting Excluded Assets, including by any renewal, extension, reissue, division, continuation, or continuation-in-part of any Intellectual Property Collateral, or any improvement on any Intellectual Property Collateral (collectively, clauses (i) and (ii) above the "After-Acquired IP Collateral"), then the provisions hereof shall automatically apply thereto and any such item of After-Acquired IP Collateral shall automatically constitute Intellectual Property Collateral as if such would have constituted Intellectual Property Collateral at the time of execution hereof and be subject to the security interest created by this Agreement without further action by any party. To the extent that any After-Acquired IP Collateral is a Registered Patent, Trademark or Copyright or exclusive license of registered U.S. Copyrights, the applicable Pledgor shall provide to the Notes Collateral Agent written notice thereof (together with a list of application and/or Registration numbers for all such additional Trademark, Patents and Copyrights) within (i) 45 days after the end of each fiscal quarter of the Company and (ii) 60 days after the end of each fiscal year of the Company, and deliver an instrument in customary form, confirming the attachment of the Lien (it being understood and agreed that the form of the Intellectual Property Security Agreements attached hereto as Exhibits C-E is a customary form), and file and record such instrument or other reasonable short-form statements as shall be reasonably necessary to create, preserve, protect or perfect the Notes Collateral Agent's security interest in such After-Acquired IP Collateral, in the United States Patent and Trademark Office, the United States Copyright Office and such other appropriate filing office, as applicable, in the United States. Further, each Pledgor authorizes the Notes Collateral Agent to modify this Agreement by amending Schedules 1.01B, 1.01C or 1.01E to this Agreement, as applicable, to include such After-Acquired IP Collateral.

SECTION 6.5. Litigation

Unless there shall occur and be continuing any Event of Default and the Company receives written notice from the Notes Collateral Agent of its intent to exercise remedies hereunder, each Pledgor shall have the right to commence and prosecute in its own name, as the party in interest, for its own benefit and at the sole cost and expense of the Pledgors, such applications for protection of the Intellectual Property Collateral and suits, proceedings or other actions to prevent the infringement, counterfeiting, unfair competition, dilution, diminution in value of or other damage as necessary to protect the Intellectual Property Collateral. Upon the occurrence and during the continuance of any Event of Default, and upon receipt by the Company of written notice from the Notes Collateral Agent stating its intent to exercise remedies hereunder, the Notes Collateral Agent shall have the right (but not the obligation) to, upon notice to the applicable Pledgor, file applications for protection of the Intellectual Property Collateral and/or bring suit in the name of any Pledgor, the Notes Collateral Agent or the Secured Parties to enforce the Intellectual Property Collateral and

any license thereunder. In the event of such suit, each Pledgor shall do any and all necessary lawful acts (including at the reasonable request of the Notes Collateral Agent) and execute any and all necessary documents (including at the reasonable request of the Notes Collateral Agent) in aid of such enforcement and the Pledgors shall promptly reimburse and indemnify the Notes Collateral Agent for all reasonable costs and expenses (including legal costs and expenses) incurred by the Notes Collateral Agent in the exercise of its rights under this Section 6.5 in accordance with Section 7.07 of the Indenture. In the event that the Notes Collateral Agent shall elect not to bring suit to enforce the Intellectual Property Collateral, each Pledgor agrees (including at the reasonable request of the Notes Collateral Agent) to take all commercially reasonable actions necessary, whether by suit, proceeding or other action, to prevent the infringement, counterfeiting, unfair competition, dilution, diminution in value of or other damage to any of the Intellectual Property Collateral by any Person.

SECTION 6.6. Secured Parties' Duties

Pledgors acknowledge and agree that the Secured Parties shall have no duties with respect to any Intellectual Property Collateral of any Pledgor. Without limiting the generality of this Section 6.6, Pledgors acknowledge and agree that no Secured Party shall be under any obligation to take any steps necessary to preserve rights in the Intellectual Property Collateral against any other Person, but any Secured Party may do so at its option from and after the occurrence and during the continuance of an Event of Default and upon receipt by the Company of written notice from such Secured Party stating its intent to exercise remedies hereunder, and all reasonable and documented expenses incurred in connection therewith (including reasonable and documented fees and expenses of counsel in accordance with the Indenture and any First Lien Priority Indebtedness Documents, and any specialist or regulatory counsel, appraisers and filed examiners and other similar professionals) shall be for the sole account of the Company and shall be a Secured Obligation. Notwithstanding the foregoing, upon any Pledgor's reasonable request, the Secured Parties shall at the Pledgor's sole cost and expense reasonably assist (other than commencing or participating in any litigation or arbitration) such Pledgor in preserving its rights in such Intellectual Property Collateral; provided, however, no Secured Party shall be obligated or liable to any Pledgor or any other party or Person, and the Pledgors shall hold harmless and indemnify the Secured Parties for any action taken or not taken by any Secured Party under or in connection with any such request made by any Pledgor; provided, further, that no Secured Party shall be required to take any steps if it reasonably believes that it could be exposed to any liability or obligation to any third party in connection with such undertaking.

ARTICLE VII

CERTAIN PROVISIONS CONCERNING RECEIVABLES

SECTION 7.1. Maintenance of Records

Each Pledgor shall keep and maintain at its own cost and expense complete records of each Receivable, in a manner consistent with prudent business practice, including records of all payments received, all credits granted thereon, all merchandise returned and all other documentation relating thereto. Upon the occurrence and during the continuance of an Event of Default, each Pledgor shall, at such Pledgor's sole cost and expense (including upon the Notes Collateral Agent's demand), deliver all tangible evidence of Receivables, including all documents evidencing Receivables and any Books and Records relating thereto to the Notes Collateral Agent or to its representatives (copies of which evidence and Books and Records may be retained by such Pledgor). Upon the occurrence and during the continuance of any Event of Default, and in connection with the preservation and/or exercise of remedies by the Notes Collateral Agent, the Notes Collateral Agent may transfer a full and complete copy of any Pledgor's Books and Records, credit information, reports, memoranda and all other writings relating to the Receivables to and for the use by any Person that has acquired or is contemplating acquisition of an interest in such Receivables or the Notes Collateral Agent's security interest therein without the consent of any Pledgor.

SECTION 7.2. Collection of Receivables

. At any time upon the occurrence and during the continuance of an Event of Default, the Notes Collateral Agent or the Notes Collateral Agent's designee may (but shall not be obligated to) (a) notify account debtors of any Pledgor that the Receivables of such Pledgor have been assigned to the Notes Collateral Agent, for the benefit of the Secured Parties, or that the Notes Collateral Agent has a security interest therein, and (b) collect the Receivables of any Pledgor directly, and any collection costs and expenses (including reasonable out of pocket legal fees and expenses) shall constitute part of such Pledgor's Secured Obligations under the Indenture and any First Lien Priority Indebtedness Documents.

ARTICLE VIII

TRANSFERS

SECTION 8.1. Transfers of Collateral

No Pledgor shall sell, convey, assign or otherwise dispose of, or grant any option with respect to, any of the Collateral pledged by it hereunder except to the extent not prohibited by the Indenture, any First Lien Priority Indebtedness Document and this Agreement.

ARTICLE IX

REMEDIES

SECTION 9.1. Remedies

. Upon the occurrence and during the continuance of any Event of Default, the Notes Collateral Agent may (but shall not be obligated to) from time to time exercise in respect of the Collateral, in addition to the other rights and remedies provided for herein, in the Indenture and any First Lien Priority Indebtedness Documents or otherwise available to it, the following remedies:

(i) personally, or by agents or attorneys, immediately take possession of the Collateral or any part thereof, from any Pledgor or any other Person who then has possession of any part thereof with or without notice or process of law, and for that purpose may enter upon any Pledgor's premises where any of the Collateral is located, remove such Collateral, remain present at such premises to receive copies of all communications and remittances relating to the Collateral and use in connection with such removal and possession any and all services, supplies, aids and other facilities of any Pledgor;

(ii) demand, sue for, collect or receive any money or property at any time payable or receivable in respect of the Collateral including instructing the obligor or obligors on any agreement, instrument or other obligation constituting part of the Collateral to make any payment required by the terms of such agreement, instrument or other obligation directly to the Notes Collateral Agent, and in connection with any of the foregoing, compromise, settle, extend the time for payment and make other modifications with respect thereto; provided that, in the event that any such payments are made directly to any Pledgor, prior to receipt by any such obligor of such instruction, such Pledgor shall segregate all amounts received pursuant thereto in trust for the benefit of the Notes Collateral Agent and shall promptly (but in no event later than five (5) Business Days after receipt thereof) pay such amounts to the Notes Collateral Agent;

(iii) sell, assign or otherwise liquidate, or direct any Pledgor to sell, assign or otherwise liquidate, any and all investments made in whole or in part with the Collateral or any part thereof, and take possession of the proceeds of any such sale, assignment, license or liquidation;

(iv) take possession of the Collateral or any part thereof, by directing any Pledgor in writing to deliver the same to the Notes Collateral Agent at any place or places so designated by the Notes Collateral Agent, in which event such Pledgor shall at its own expense: (A) forthwith cause the same to be moved to the place or places designated by the Notes Collateral Agent and therewith delivered to the Notes

Collateral Agent, (B) store and keep any Collateral so delivered to the Notes Collateral Agent at such place or places pending further action by the Notes Collateral Agent and (C) while the Collateral shall be so stored and kept, provide such security and maintenance services as shall be necessary to protect the same and to preserve and maintain them in good condition. Each Pledgor's obligation to deliver the Collateral as contemplated in this Section 9.1(iv) is of the essence hereof. Upon application to a court of equity having jurisdiction, the Notes Collateral Agent shall be entitled to a decree requiring specific performance by any Pledgor of such obligation;

(v) withdraw all moneys, instruments, securities and other property in any bank, financial securities, deposit or other account of any Pledgor constituting Collateral for application to the Secured Obligations as provided in Article X hereof;

(vi) retain and apply the Distributions to the Secured Obligations as provided in Article X hereof;

(vii) exercise any and all rights as beneficial and legal owner of the Collateral, including perfecting assignment of and exercising any and all voting, consensual and other rights and powers with respect to any Collateral;

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(viii) exercise any and all rights set forth in Sections 3.7 and 6.1 hereof in accordance with the terms thereof;

(ix) exercise all the rights and remedies of a secured party on default under the UCC or any other applicable law, and the Notes Collateral Agent may also in its sole discretion, without notice except as specified in Section 9.2 hereof, sell, assign or grant a license to use the Collateral or any part thereof in one or more parcels at public or private sale, at any exchange, broker's board or at any of the Notes Collateral Agent's offices or elsewhere, for cash, on credit or for future delivery, and at such price or prices and upon such other terms as the Notes Collateral Agent may deem commercially reasonable. The Notes Collateral Agent or any other Secured Party or any of their respective Affiliates may be the purchaser, licensee, assignee or recipient of the Collateral or any part thereof at any such sale and shall be entitled, for the purpose of bidding and making settlement or payment of the purchase price for all or any portion of the Collateral sold, assigned or licensed at such sale, to use and apply any of the Secured Obligations owed to such Person as a credit on account of the purchase price of the Collateral or any part thereof payable by such Person at such sale. Each purchaser, assignee, licensee or recipient at any such sale, to the extent permitted by applicable law, shall acquire the property sold, assigned or licensed absolutely free from any claim or right on the part of any Pledgor, and each Pledgor hereby waives, to the fullest extent permitted by law, all rights of redemption, stay and/or appraisal which it now has or may at any time in the future have under any rule of law or statute now existing or hereafter enacted. The Notes Collateral Agent shall not be obligated to make any sale of the Collateral or any part thereof regardless of notice of sale having been given. The Notes Collateral Agent may (but shall not be obligated to) adjourn any public or private sale from time to time by announcement at the time and place fixed therefor, and such sale may, without further notice, be made at the time and place to which it was so adjourned. Each Pledgor hereby waives, to the fullest extent permitted by law, any claims against the Notes Collateral Agent arising by reason of the fact that the price at which the Collateral or any part thereof may have been sold, assigned or licensed at such a private sale was less than the price which might have been obtained at a public sale, even if the Notes Collateral Agent accepts the first offer received and does not offer such Collateral to more than one offeree;

(x) seek and obtain an immediate writ of possession without notice of a hearing. The Notes Collateral Agent shall have the right to the appointment of a receiver for the properties and assets of each Pledgor, and each Pledgor hereby consents to such rights and such appointment and hereby waives any objection such Pledgor may have thereto or the right to have a bond or other security posted by the Notes Collateral Agent; and

(xi) exercise remedies and sell the Collateral under the Indenture and any First Lien Priority Indebtedness Documents at the written direction of (x) prior to the payment in full of the principal of, together with any accrued and unpaid interest on all the Notes Obligations, the Trustee (acting in accordance with the Indenture) and (y) thereafter the holders of a majority of the aggregate principal amount of the Secured Obligations; provided that if the Notes Collateral Agent shall not have received such direction within 10 days after making a request therefore (or such shorter period as may be specified in such request or as may be necessary under the circumstances), it may (but in no event shall be obligated to) take or

refrain from taking such action as it shall deem to be in the best interest of the holders of the Notes and other Secured Obligations and the Notes Collateral Agent shall have no liability to any Person for such action or inaction.

SECTION 9.2. Notice of Sale

Each Pledgor acknowledges and agrees that, to the extent notice of sale or other disposition of the Collateral or any part thereof shall be required by law, ten (10) days' prior notice to such Pledgor of the time and place of any public sale or of the time after which any private sale or other intended disposition is to take place shall be commercially reasonable notification of such matters. No notification need be given to any Pledgor if it has signed, after the occurrence and during the continuance of an Event of Default, a statement renouncing or modifying any right to notification of sale or other intended disposition.

SECTION 9.3. Waiver of Notice and Claims

Each Pledgor hereby waives, to the fullest extent permitted by applicable law, notice or judicial hearing in connection with the Notes Collateral Agent's taking possession or the Notes Collateral Agent's disposition of the Collateral or any part thereof, in accordance with the terms of this Agreement, including any and all prior notice and hearing for any prejudgment remedy or remedies and any such right which such Pledgor would otherwise have under law, and each Pledgor hereby further waives, to the fullest extent permitted by applicable law: (i) all damages occasioned by such taking of possession, (ii) all other requirements as to the time, place and terms of sale or other requirements with respect to the enforcement of the Notes Collateral Agent's rights hereunder and (iii) all rights of redemption, appraisal, valuation, stay, extension or moratorium now or hereafter in force under any applicable law. The Notes Collateral Agent shall not be liable for any incorrect or improper payment made pursuant to this Article IX in the absence of gross negligence or willful misconduct on the part of the Notes Collateral Agent. Any sale of, or the grant of options to purchase, or any other realization upon, any Collateral shall operate to divest all right, title, interest, claim and demand, either at law or in equity, of the applicable Pledgor therein and thereto, and shall be a perpetual bar both at law and in equity against such Pledgor and against any and all Persons claiming or attempting to claim the Collateral so sold, optioned or realized upon, or any part thereof, from, through or under such Pledgor.

SECTION 9.4. Certain Sales of Collateral

(a) Each Pledgor recognizes that, by reason of certain prohibitions contained in law, rules, regulations or orders of any governmental authority, the Notes Collateral Agent may be compelled, with respect to any sale of all or any part of the Collateral, to limit purchasers to those who meet the requirements of such governmental authority. Each Pledgor acknowledges that any such sales may be at prices and on terms less favorable to the Notes Collateral Agent than those obtainable through a public sale without such restrictions, and, notwithstanding such circumstances, agrees that any such restricted sale shall be deemed to have been made in a commercially reasonable manner and that, except as may be required by applicable law, the Notes Collateral Agent shall have no obligation to engage in public sales.

(b) Each Pledgor recognizes that, by reason of certain prohibitions contained in the Securities Act, and applicable state securities laws, the Notes Collateral Agent may be compelled, with respect to any sale of all or any part of the Securities Collateral and Investment Property, to limit purchasers to Persons who will agree, among other things, to acquire such Securities Collateral or Investment Property for their own account, for investment and not with a view to the distribution or resale thereof. Each Pledgor acknowledges that any such private sales may be at prices and on terms less favorable to the Notes Collateral Agent than those obtainable through a public sale without such restrictions (including a public offering made pursuant to a registration statement under the Securities Act), and, notwithstanding such circumstances, agrees that any such private sale shall be deemed to have been made in a commercially reasonable manner and that the Notes Collateral Agent shall have no obligation to engage in public sales and no obligation to delay the sale of any Securities Collateral or

Investment Property for the period of time necessary to permit the issuer thereof to register it for a form of public sale requiring registration under the Securities Act or under applicable state securities laws, even if such issuer would agree to do so.

SECTION 9.5. No Waiver; Cumulative Remedies.

(a) No failure on the part of the Notes Collateral Agent to exercise, no course of dealing with respect to, and no delay on the part of the Notes Collateral Agent in exercising, any right, power or remedy hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any such right, power, privilege or remedy hereunder preclude any other or further exercise thereof or the exercise of any other right, power, privilege or remedy; nor shall the Notes Collateral Agent be required to look first to, enforce or exhaust any other security, collateral or guaranties. All rights and remedies herein provided are cumulative and are not exclusive of any rights or remedies provided by law or otherwise available.

(b) In the event that the Notes Collateral Agent shall have instituted any proceeding to enforce any right, power, privilege or remedy under this Agreement, the Indenture or any First Lien Priority Indebtedness Document by foreclosure, sale, entry or otherwise, and such proceeding shall have been discontinued or abandoned for any reason or shall have been determined adversely to the Notes Collateral Agent, then and in every such case, the Pledgors, the Notes Collateral Agent and each other Secured Party shall be restored to their respective former positions and rights hereunder with respect to the Collateral, and all rights, remedies, privileges and powers of the Notes Collateral Agent and the other Secured Parties shall continue as if no such proceeding had been instituted.

SECTION 9.6. Certain Additional Actions Regarding Intellectual Property.

. If any Event of Default shall have occurred and be continuing, each Pledgor shall (including upon the written demand of the Notes Collateral Agent) execute and deliver to the Notes Collateral Agent an assignment or assignments of the Registered Patents, Trademarks and/or Copyrights, including exclusive licenses of U.S. registered Copyrights, and such other documents as are necessary or appropriate to carry out the intent and purposes hereof.

SECTION 9.7. Marshaling

. The Notes Collateral Agent shall not be required to marshal any present or future collateral security (including but not limited to the Collateral) for, or other assurances of payment of, the Secured Obligations or any of them or to resort to such collateral security or other assurances of payment in any particular order, and all of its rights and remedies hereunder and in respect of such collateral security and other assurances of payment shall be cumulative and in addition to all other rights and remedies, however existing or arising. To the extent that it lawfully may, each Pledgor hereby agrees that it will not invoke any law relating to the marshaling of collateral which might cause delay in or impede the enforcement of the Notes Collateral Agent's rights and remedies under this Agreement or under any other instrument creating or evidencing any of the Secured Obligations or under which any of the Secured Obligations is outstanding or by which any of the Secured Obligations is secured or payment thereof is otherwise assured, and, to the extent that it lawfully may, each Pledgor hereby irrevocably waives the benefits of all such laws.

SECTION 9.8. Certain Agreements with Respect to Bankruptcy or Insolvency Proceedings.

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(a) This Agreement shall continue in full force and effect notwithstanding the commencement of any proceeding under the Bankruptcy Code, other applicable Bankruptcy Law, or any other Federal, state or foreign bankruptcy, insolvency, receivership or similar

law by or against the Company or any of its Subsidiaries.

(b) If the Company and/or any other Pledgor shall become subject to a case (a "Bankruptcy Case") under the Bankruptcy Code or other applicable Bankruptcy Law and shall, as debtor(s)-in-possession, move for approval of financing ("DIP Financing") to be provided by one or more lenders (the "DIP Lenders") under Section 364 of the Bankruptcy Code or any equivalent provision of any other Bankruptcy Law or the use of cash collateral under Section 363 of the Bankruptcy Code or any equivalent provision of any other Bankruptcy Law, each Secured Party agrees that it will raise no objection to any such financing or to the Liens on the Collateral securing the same ("DIP Financing Liens") or to any use of cash collateral that constitutes Shared Collateral, unless any Notes Secured Party shall then oppose or object to such DIP Financing or such DIP Financing Liens or use of cash collateral (and (i) to the extent that such DIP Financing Liens are senior to the Liens on any such Collateral for the benefit of the Notes Secured Parties, each other Secured Party will subordinate its Liens with respect to such Collateral on the same terms as the Liens of the Notes Secured Parties (other than any Liens of any Secured Parties constituting DIP Financing Liens) are subordinated thereto, and (ii) to the extent that such DIP Financing Liens rank pari passu with the Liens on any such Collateral granted to secure the Obligations of the Notes Secured Parties, each other Secured Party will confirm the priorities with respect to such Collateral as set forth herein), in each case so long as (A) all of the Secured Parties retain the benefit of their Liens on all such Collateral pledged to the DIP Lenders, including proceeds thereof arising after the commencement of such proceeding, with the same priority vis-a-vis all the other Secured Parties (other than any Liens of the Secured Parties constituting DIP Financing Liens) as existed prior to the commencement of the Bankruptcy Case, (B) all of the Secured Parties are granted Liens on any additional collateral pledged to any Secured Parties as adequate protection or otherwise in connection with such DIP Financing or use of cash collateral, with the same priority vis-a-vis the Secured Parties as set forth in this Agreement, (C) if any amount of such DIP Financing or cash collateral is applied to repay any of the Obligations, such amount is applied pursuant to Section 10.01 of this Agreement, (D) if any Secured Parties are granted adequate protection, including in the form of periodic payments, in connection with such DIP Financing or use of cash collateral, the proceeds of such adequate protection are applied pursuant to Section 10.01 of this Agreement, and (E) such DIP Financing does not otherwise violate the provisions of this Agreement; provided that the Secured Parties receiving adequate protection shall not object to any other Secured Party receiving adequate protection comparable to any adequate protection granted to such Secured Parties in connection with a DIP Financing or use of cash collateral.

ARTICLE X

APPLICATION OF PROCEEDS

SECTION 10.1. Application of Proceeds

(a) The proceeds received by the Notes Collateral Agent in respect of any sale of, collection from or other realization upon all or any part of the Collateral pursuant to the exercise by the Notes Collateral Agent of its remedies under this Agreement, the Indenture and any First Lien Priority

Indebtedness Documents shall be applied, together with any other sums then held by the Notes Collateral Agent pursuant to the Security Documents, by the Notes Collateral Agent as follows:

First, to the payment of all reasonable costs and expenses, fees, commissions and taxes of such sale, collection or other realization including compensation to the Notes Collateral Agent, the Trustee and any other Authorized Representative and their respective agents and counsel, and all expenses, liabilities and advances made or incurred by the Notes Collateral Agent, Trustee and any other Authorized Representative in connection therewith and all fees, expenses, indemnities and other amounts for which each of the Notes Collateral Agent and the

Trustee is entitled pursuant to the provisions of the Indenture, any First Lien Priority Indebtedness Document or this Agreement and any other Authorized Representative is entitled in accordance with the terms of the applicable agreements with respect to the First Lien Priority Indebtedness then in effect;

Second, subject to clause (e) below, to all amounts then owing in respect of the Secured Obligations on a pro rata basis; and

Third, the balance, if any, to the Pledgors or such other Persons as are entitled thereto.

(b) It is understood that the Pledgors shall remain jointly and severally liable to the extent of any deficiency between the amount of the proceeds of the Collateral and the aggregate amount of the Secured Obligations.

(c) If, despite the provisions of this Agreement, any Secured Party shall receive any payment or other recovery in excess of its portion of payments on account of the Secured Obligations to which it is then entitled in accordance with this Agreement, such Secured Party shall hold such payment or other recovery in trust for the benefit of all Secured Parties hereunder for distribution in accordance with this Section 10.1.

(d) In making the determinations and allocations required by this Section 10.1, the Notes Collateral Agent may conclusively rely upon information supplied by the Trustee or each Authorized Representative, as applicable, as to the amounts of unpaid principal and interest and other amounts outstanding with respect to the Secured Obligations, and the Notes Collateral Agent shall have no liability to any of the Secured Parties for actions taken in reliance on such information, provided that nothing in this sentence shall prevent any Pledgor from contesting any amounts claimed by any Secured Party in any information so supplied. All distributions made by the Notes Collateral Agent pursuant to this Section 10.1 shall be (subject to any decree of any court of competent jurisdiction) final (absent manifest error), and the Notes Collateral Agent shall have no duty to inquire as to the application by the Trustee or any Authorized Representative of any amounts distributed to it. All distributions to be made to the holders of the Notes for principal, premium, if any, and unpaid interest shall be made to the Trustee for further distribution in accordance with Section 6.10 of the Indenture.

(e) Notwithstanding the foregoing and notwithstanding the pari passu nature of the Liens securing all the Secured Obligations, in the event of any determination by a court of competent jurisdiction that (i) the Secured Obligations of any series are unenforceable under applicable law or are subordinated to any other obligations, (ii) the Secured Obligations of any series do not have an enforceable security interest in any of the Collateral and/or (iii) any intervening Lien or security interest exists securing any other obligations (other than any Secured Obligations) on a basis ranking prior to the Lien and security interest of such series of Secured Obligations but junior to the Lien and security interest of the other series of Secured Obligations (any such condition referred to in the foregoing clauses (i), (ii)

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or (iii) above with respect to Secured Obligations of such series, an "Impairment" of such series of Secured Obligations), the results of such Impairment shall be borne solely by the holders of such series of Secured Obligations, and the rights of the holders of such series of Secured Obligations (including, without limitation, the right to receive distributions in respect of such series of Secured Obligations) set forth herein shall be modified to the extent necessary so that the effects of such Impairment are borne solely by the holders of such series of Secured Obligations subject to such Impairment. Notwithstanding the foregoing, with respect to any Collateral for which a third party (other than a holder of Secured Obligations) has a Lien or security interest that is junior in priority to the security interest of the holders of the other series of Secured Obligations but senior (as determined by appropriate legal proceedings in the case of any dispute) to the security interest of the holder of any other Secured Obligations (such third party, an "Intervening Creditor"), the value of any Collateral or proceeds which are allocated to such Intervening Creditor shall be deducted on a ratable basis solely from the Collateral or proceeds to be distributed in respect of the Secured Obligations with respect to which such Impairment exists.

ARTICLE XI

MISCELLANEOUS

SECTION 11.1. Concerning Notes Collateral Agent.

(a) The Notes Collateral Agent has been appointed as Notes Collateral Agent pursuant to the Indenture. The actions of the Notes Collateral Agent hereunder are subject to the provisions of the Indenture. The Notes Collateral Agent shall have the right (but not the obligation) hereunder to make demands, to give notices, to exercise or refrain from exercising any rights, and to take or refrain from taking action (including the release or substitution of the Collateral), in accordance with this Agreement and the Indenture. The Notes Collateral Agent may employ agents, co-agents and attorneys-in-fact in connection herewith and shall not be liable for the negligence or misconduct of any such agents, co-agents or attorneys-in-fact selected by it in good faith. The Notes Collateral Agent may resign and a successor Notes Collateral Agent may be appointed in the manner provided in the Indenture. Upon the acceptance of any appointment as the Notes Collateral Agent by a successor Notes Collateral Agent, that successor Notes Collateral Agent shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the retiring Notes Collateral Agent under this Agreement, and the retiring Notes Collateral Agent shall thereupon be discharged from its duties and obligations under this Agreement. After any retiring Notes Collateral Agent's resignation, the provisions hereof shall inure to its benefit as to any actions taken or omitted to be taken by it under this Agreement while it was the Notes Collateral Agent.

(b) The Notes Collateral Agent shall be deemed to have exercised reasonable care in the custody and preservation of the Collateral in its possession if such Collateral is accorded treatment substantially equivalent to that which the Notes Collateral Agent, in its individual capacity, accords its own property consisting of similar instruments or interests, it being understood that neither the Notes Collateral Agent nor any of the Secured Parties shall have responsibility for (i) ascertaining or taking action with respect to calls, conversions, exchanges, maturities, tenders or other matters relating to any Securities Collateral, whether or not the Notes Collateral Agent or any other Secured Party has or is deemed to have knowledge of such matters or (ii) taking any necessary steps to preserve rights against any Person with respect to any Collateral.

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(c) The Notes Collateral Agent shall be entitled to rely upon any written notice, statement, certificate, order or other document believed by it to be genuine and correct and to have been signed, sent or made by the proper Person, and, with respect to all matters pertaining to this Agreement and its duties hereunder, upon advice of counsel selected by it.

(d) If any item of Collateral also constitutes collateral granted to the Notes Collateral Agent under any other deed of trust, mortgage, security agreement, pledge or instrument of any type, in the event of any conflict between the provisions hereof and the provisions of such other deed of trust, mortgage, security agreement, pledge or instrument of any type in respect of such collateral, this Agreement shall control.

(e) The Notes Collateral Agent has no duty to investigate whether any or all UCC financing statements of the Pledgors need to be amended as a result of any of the changes described in Section 4.02(d) of the Indenture. The Notes Collateral Agent shall not be liable or responsible to any party for any failure to maintain a perfected Lien in such Pledgor's property constituting Collateral.

(f) The Notes Collateral Agent shall not be liable or responsible to any party for any failure to maintain a perfected security interest in any Grantor's property constituting Collateral.

(g) Notwithstanding anything to the contrary in this Agreement, the Notes Collateral Agent shall have no obligation to exercise any right, power or discretion granted to it under this Agreement unless expressly required hereunder.

(h) In acting under this Agreement, the Notes Collateral Agent shall be entitled to all of the rights, privileges, indemnities, limitations on liability and immunities granted to it under the Indenture and any First Lien Priority Indebtedness Documents.

SECTION 11.2. Notes Collateral Agent May Perform; Notes Collateral Agent Appointed Attorney-in-Fact

If any Pledgor shall fail to perform any covenants contained in this Agreement and such failure results in an Event of Default, the Notes Collateral Agent may (but shall not be obligated to) do the same or cause it to be done or remedy any such breach, and may expend reasonable funds for such purpose; provided, that, the Notes Collateral Agent shall in no event be bound to inquire into the validity of any tax, Lien, imposition or other obligation which such Pledgor fails to pay or perform as and when required hereby and which such Pledgor does not contest in accordance with the provisions of the Indenture and any First Lien Priority Indebtedness Document. Any and all amounts so expended by the Notes Collateral Agent (including legal fees and expenses) shall be paid by the Pledgors in accordance with the provisions of Section 7.07 of the Indenture. Neither the provisions of this Section 11.2 nor any action taken by the Notes Collateral Agent pursuant to the provisions of this Section 11.2 shall prevent any such failure to observe any covenant contained in this Agreement nor any breach of representation or warranty from constituting an Event of Default. Each Pledgor hereby appoints the Notes Collateral Agent its attorney-in-fact, with full power and authority in the place and stead of such Pledgor and in the name of such Pledgor, or otherwise, from time to time during the occurrence and continuation of an Event of Default in the Notes Collateral Agent's discretion to take any action and to execute any instrument consistent with the terms of the Indenture, this Agreement and any First Lien Priority Indebtedness Documents which the Notes Collateral Agent may deem necessary or advisable to accomplish the purposes hereof (but the Notes Collateral Agent shall not be obligated to and shall have no liability to such Pledgor or any third party for failure to so do or take action), including:

(i) to ask, demand, collect, sue for, recover, compromise, receive and give acquittance and receipts for moneys due and to become due under or in connection with the Receivables or any other Collateral of such Pledgor;

(ii) to receive and open all mail addressed to such Pledgor and to notify postal authorities to change the address for the delivery of mail to such Pledgor to that of Notes Collateral Agent (other than with respect to mail from legal counsel for any Pledgor or any of their respective Affiliates);

(iii) to receive, indorse, and collect any drafts or other Instruments, Documents, Chattel Paper, Letters of Credit or Letter-of-Credit Rights included in the Collateral;

(iv) to file any claims or take any action or institute any proceedings which Notes Collateral Agent may deem necessary or desirable for the collection of any of the Collateral of such Pledgor or otherwise to enforce the rights of Notes Collateral Agent with respect to any of the Collateral;

(v) to repair, alter, or supply goods, if any, necessary to fulfill in whole or in part the purchase order of any Person obligated to such Pledgor in respect of any Account of such Pledgor;

(vi) to exercise its right to vote any Pledged Securities pursuant to Section 5.2 hereof; and

(vii) to use or otherwise exploit any Intellectual Property Collateral of such Pledgor, including but not limited to any labels, Patents, Trademarks, trade names, URLs, domain names, industrial designs, Copyrights, or advertising matter, in preparing for sale, advertising for sale, or selling Inventory or other Collateral and to collect any amounts due under Receivables, contracts, Instruments, Documents, Letters of Credit or Letter-of-Credit Rights of such Pledgor.

The foregoing grant of authority is a power of attorney coupled with an interest and such appointment shall be irrevocable for the term hereof. Each Pledgor hereby ratifies all that such attorney shall lawfully do or cause to be done by virtue hereof.

SECTION 11.3. Continuing Security Interest; Assignment

This Agreement shall create a continuing security interest in the Collateral and shall (i) be binding upon the Pledgors and their respective successors and assigns and (ii) inure, together with the rights and remedies of the Notes Collateral Agent hereunder, to the benefit of the Notes Collateral Agent and the other Secured Parties and each of their respective successors, transferees and assigns. No other Persons (including any

other creditor of any Pledgor) shall have any interest herein or any right or benefit with respect hereto. Without limiting the generality of the foregoing clause (ii), any Secured Party may assign or otherwise transfer any indebtedness held by it secured by this Agreement to any other Person, and such other Person shall thereupon become vested with all the benefits in respect thereof granted to such Secured Party, herein or otherwise, subject however, to the provisions of the Indenture. Each of the Pledgors agrees that its obligations hereunder and the security interest created hereunder shall continue to be effective or be reinstated, as applicable, if at any time payment, or any part thereof, of all or any part of the Secured Obligations is rescinded or must otherwise be restored by the Secured Party upon the bankruptcy or reorganization of any Pledgor or otherwise.

SECTION 11.4. Termination; Release

(a) Solely with respect to the Notes Obligations, a Pledgor shall automatically be released from its obligations hereunder and/or the security interests in any Collateral (or any part thereof) securing the Notes Obligations shall in each case be automatically released in accordance with the provisions of the Indenture. Solely with respect to any series of First Lien Priority Indebtedness, a Pledgor shall automatically be released from its obligations hereunder and/or the security interests in any Collateral (or any part thereof) securing such series of First Lien Priority Indebtedness shall in each case be automatically released in accordance with the First Lien Priority Indebtedness Documents governing such series of First Lien Priority Indebtedness. Upon such release or any such sale, transfer or disposition of Collateral or any part thereof, the Notes Collateral Agent shall promptly, upon the written request and at the sole cost and expense of the Pledgors (and upon receipt of any certifications and opinions in connection therewith required by the terms of the Indenture and the First Lien Priority Indebtedness Documents), assign, transfer and deliver to Pledgor, against receipt and without recourse to or warranty by the Notes Collateral Agent, such of the Collateral or any part thereof to be released (in the case of a release) as may be in possession of the Notes Collateral Agent and as shall not have been sold or otherwise applied pursuant to the terms hereof, and, with respect to any other Collateral, proper documents and instruments (including UCC-3 termination financing statements, releases or reassignments and any termination or partial termination and release of Memorandum of Security Agreements) evidencing the termination hereof or the release of such Collateral, as the case may be.

(b) If any Pledgor ceases to be a Guarantor in accordance with the provisions of the Indenture and any First Lien Priority Indebtedness Document, such Pledgor shall automatically be released from this Agreement and all Liens in such Pledgor's Collateral granted hereunder shall automatically terminate to the extent provided by the Indenture and the First Lien Priority Indebtedness Documents and the Notes Collateral Agent shall promptly, at the Company's expense and upon receipt of any certifications and opinions in connection therewith required by the terms of the Indenture and the First Lien Priority Indebtedness Documents, execute and deliver to the applicable Pledgor such documents as such Pledgor may reasonably request to evidence the release of Pledgor from the assignment and security interest granted hereunder and from its obligations hereunder.

SECTION 11.5. Modification in Writing

No amendment, modification, supplement, termination or waiver of or to any provision hereof, nor consent to any departure by any Pledgor therefrom, shall be effective unless the same shall be made in accordance with the terms of the Indenture and each First Lien Priority Indebtedness Document and unless in writing and signed by the Notes Collateral Agent (upon receipt of any certifications and opinions in connection therewith

and required by the terms of the Indenture and the First Lien Priority Indebtedness Documents). Any amendment, modification or supplement of or to any provision hereof, any waiver of any provision hereof and any consent to any departure by any Pledgor from the terms of any provision hereof in each case shall be effective only in the specific instance and for the specific purpose for which made or given. Except where notice is specifically required by this Agreement or any other document evidencing the Secured Obligations, no notice to or demand on any Pledgor in any case shall entitle any Pledgor to any other or further notice or demand in similar or other circumstances.

SECTION 11.6. Notices

Except as otherwise specified herein, all notices, requests, demands or other communications to or upon the respective parties hereto shall be sent or delivered in accordance with Section 13.02 of the Indenture. All notices and other communications shall be in writing and addressed as follows:

1. if to any Pledgor:

The RealReal, Inc.

55 Francisco Street Suite 400

San Francisco, CA 94133

Attention: Todd Suko, Chief Legal Officer and Secretary

E-mail: todd.suko@therealreal.com

2. if to the Notes Collateral Agent:

GLAS Trust Company

3 Second Street, Suite 206

Jersey City, NJ 07311

Attention: Transaction Management Group: The RealReal

Email: tmgus@glas.agency

3. if to any Authorized Representative, at the notice address specified in the First Lien Priority Secured Party Joinder;

or at such other address or addressed to such other individual as shall have been furnished in writing by any Person described above to the party required to give notice hereunder.

SECTION 11.7. Applicable Law, Waiver of Jury Trial, Jurisdiction, Consent to Service of Process.

(a) EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THE INDENTURE OR ANY OF THE FIRST LIEN PRIORITY INDEBTEDNESS DOCUMENTS, IN ALL RESPECTS,

INCLUDING ALL MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE, THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW. EACH PARTY HERETO HEREBY IRREVOCABLY SUBMITS TO THE NON-EXCLUSIVE JURISDICTION OF ANY NEW YORK STATE OR FEDERAL COURT SITTING IN THE BOROUGH OF MANHATTAN, CITY OF NEW YORK, OVER ANY SUIT, ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE INDENTURE OR ANY OF THE FIRST LIEN PRIORITY INDEBTEDNESS DOCUMENTS RELATED TO THIS AGREEMENT OR TO ANY MATTER ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE INDENTURE OR ANY OF THE FIRST LIEN PRIORITY INDEBTEDNESS DOCUMENTS; PROVIDED THAT THE PARTIES HERETO ACKNOWLEDGE THAT ANY APPEALS FROM THOSE COURTS MAY HAVE TO BE HEARD BY A COURT LOCATED OUTSIDE OF

NEW YORK COUNTY; PROVIDED, FURTHER, THAT NOTHING IN THIS AGREEMENT SHALL BE DEEMED OR OPERATE TO PRECLUDE THE NOTES COLLATERAL AGENT FROM BRINGING SUIT OR TAKING OTHER LEGAL ACTION IN ANY OTHER JURISDICTION TO REALIZE ON THE COLLATERAL OR ANY OTHER SECURITY FOR THE SECURED OBLIGATIONS, OR TO ENFORCE A JUDGMENT OR OTHER COURT ORDER IN FAVOR OF THE NOTES COLLATERAL AGENT. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, EACH PARTY HERETO IRREVOCABLY WAIVES AND AGREES NOT TO ASSERT, BY WAY OF MOTION, AS A DEFENSE OR OTHERWISE, ANY CLAIM THAT IT IS NOT SUBJECT TO THE JURISDICTION OF ANY SUCH COURT, ANY OBJECTION THAT IT MAY NOW OR HERAFTER HAVE TO THE LAYING OF THE VENUE OF ANY SUCH SUIT, ACTION OR PROCEEDING BROUGHT IN ANY SUCH COURT AND ANY CLAIM THAT ANY SUCH SUIT, ACTION OR PROCEEDING BROUGHT IN ANY SUCH COURT HAS BEEN BROUGHT IN AN INCONVENIENT FORUM AND HEREBY CONSENTS TO THE GRANTING OF SUCH LEGAL OR EQUITABLE RELIEF AS IS DEEMED APPROPRIATE BY SUCH COURT. EACH PARTY HERETO HEREBY WAIVES PERSONAL SERVICE OF THE SUMMONS, COMPLAINT AND OTHER PROCESS ISSUED IN ANY SUCH ACTION OR SUIT AND AGREES THAT SERVICE OF SUCH SUMMONS, COMPLAINT AND OTHER PROCESS MAY BE MADE BY REGISTERED OR CERTIFIED MAIL ADDRESSED TO SUCH PLEDGOR AT THE ADDRESS SET FORTH IN SECTION 11.6 OF THIS AGREEMENT AND THAT SERVICE SO MADE SHALL BE DEEMED COMPLETED UPON THE EARLIER OF SUCH PLEDGOR'S ACTUAL RECEIPT THEREOF OR FIVE (5) BUSINESS DAYS AFTER DEPOSIT IN THE UNITED STATES MAIL, PROPER POSTAGE PREPAID.

(b) EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE INDENTURE OR ANY OF THE FIRST LIEN PRIORITY INDEBTEDNESS DOCUMENTS. EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, NOTES COLLATERAL AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT, THE INDENTURE AND ANY FIRST LIEN PRIORITY INDEBTEDNESS DOCUMENTS, AS APPLICABLE, BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 11.7(b).

SECTION 11.8. Severability of Provisions

- 1 -

. In case any provision hereof is invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby and such provision shall be ineffective only to the extent of such invalidity, illegality or unenforceability.

SECTION 11.9. Execution in Counterparts

. This Agreement and any amendments, waivers, consents or supplements hereto may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed to be an original and all of which taken together shall constitute one and the same agreement. This Agreement and any certificate, agreement or other document to be signed in connection with this Agreement and the transactions contemplated hereby shall be valid, binding, and enforceable against a party only when executed and delivered by an authorized individual on behalf of the party by means of (i) an original manual signature; (ii) a faxed, scanned, or photocopied manual signature; or (iii) in the case of this Agreement and any certificate, agreement or other document to be signed in connection with this Agreement and the transactions contemplated hereby (other than any Notes) any electronic signature permitted by the federal Electronic Signatures in Global and National Commerce Act, state enactments of the Uniform Electronic Transactions Act, and/or any other relevant electronic signatures law, including relevant provisions of the Uniform Commercial Code (collectively, "Signature Law"). Each electronic signature (except in the case of any Notes) or faxed, scanned, or photocopied manual signature shall for all purposes have the same validity, legal effect, and admissibility in evidence as an original manual signature. Each party hereto shall be entitled to conclusively rely upon, and shall have no liability with respect to, any faxed, scanned, or photocopied manual signature, or other electronic signature (except in the case of any Notes), of any party and shall have no duty to investigate, confirm or otherwise verify the validity or authenticity thereof. For avoidance of doubt, original manual signatures shall be used

for execution or indorsement of writings when required under the Uniform Commercial Code or other Signature Law due to the character or intended character of the writings.

SECTION 11.10. Business Days

. In the event any time period or any date provided in this Agreement ends or falls on a day other than a Business Day, then such time period shall be deemed to end and such date shall be deemed to fall on the next succeeding Business Day, and performance herein may be made on such Business Day, with the same force and effect as if made on such other day.

SECTION 11.11. No Credit for Payment of Taxes or Imposition

. No Pledgor shall be entitled to any credit against the principal, premium, if any, or interest payable under the Indenture, and such Pledgor shall not be entitled to any credit against any other sums which may become payable under the terms thereof or hereof, by reason of the payment of any tax on the Collateral or any part thereof.

SECTION 11.12. No Claims Against Notes Collateral Agent

. Nothing contained in this Agreement shall constitute any consent or request by the Notes Collateral Agent, express or implied, for the performance of any labor or services or the furnishing of any materials or other property in respect of the Collateral or any part thereof, nor as giving any Pledgor any right, power or authority to contract for or permit the performance of any labor or services or the furnishing of any materials or other property in such fashion as would permit the making of any claim against the Notes Collateral Agent in respect thereof or any claim that any Lien based on the performance of such labor or

- 1 -

services or the furnishing of any such materials or other property is prior to the Notes Collateral Agent's security interest.

SECTION 11.13. No Release

. Subject to Section 11.4, nothing set forth in this Agreement, the Indenture or any First Lien Priority Indebtedness Document, nor the exercise by the Notes Collateral Agent of any of the rights or remedies hereunder, shall relieve any Pledgor from the performance of any term, covenant, condition or agreement on such Pledgor's part to be performed or observed under or in respect of any of the Collateral or from any liability to any Person under or in respect of any of the Collateral or shall impose any obligation on the Notes Collateral Agent or any other Secured Party to perform or observe any such term, covenant, condition or agreement on such Pledgor's part to be so performed or observed or shall impose any liability on the Notes Collateral Agent or any other Secured Party for any act or omission on the part of such Pledgor relating thereto or for any breach of any representation or warranty on the part of such Pledgor contained in this Agreement, the Indenture or any First Lien Priority Indebtedness Documents, or under or in respect of the Collateral or made in connection herewith or therewith. Anything herein to the contrary notwithstanding, neither the Notes Collateral Agent nor any other Secured Party shall have any obligation or liability under any contracts, agreements and other documents included in the Collateral by reason of this Agreement, nor shall the Notes Collateral Agent or any other Secured Party be obligated to perform any of the obligations or duties of any Pledgor thereunder or to take any action to collect or enforce any such contract, agreement or other document included in the Collateral hereunder. The obligations of each Pledgor contained in this Section 11.13 shall survive the termination hereof and the discharge of such Pledgor's other obligations under this Agreement, the Indenture and any First Lien Priority Indebtedness Documents.

SECTION 11.14. Obligations Absolute

. All obligations of each Pledgor hereunder shall be absolute and unconditional irrespective of:

- (i) any Insolvency Proceeding or the like of any other Pledgor;

(ii) any lack of validity or enforceability of the Indenture or any First Lien Priority Indebtedness Document, or any other agreement or instrument relating thereto;

(iii) any change in the time, manner or place of payment of, or in any other term of, all or any of the Secured Obligations, or any other amendment or waiver of or any consent to any departure from the Indenture or any First Lien Priority Indebtedness Document or any other agreement or instrument relating thereto;

(iv) any pledge, exchange, release or non-perfection of any other collateral, or any release or amendment or waiver of or consent to any departure from any guarantee, for all or any of the Secured Obligations;

(v) any exercise, non-exercise or waiver of any right, remedy, power or privilege under or in respect hereof, the Indenture or any First Lien Priority Indebtedness Document except as specifically set forth in a waiver granted pursuant to the provisions of Section 11.5 hereof; or

(vi) any other circumstances which might otherwise constitute a defense available to, or a discharge of, any Pledgor.

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SECTION 11.15. First Lien Priority Indebtedness

. On or after the date hereof and so long as expressly permitted by the Indenture and any agreement with respect to First Lien Priority Indebtedness then outstanding, the Company may from time to time designate indebtedness at the time of incurrence to be secured on a *pari passu* basis with the Notes Obligations as First Lien Priority Indebtedness hereunder by delivering to the Notes Collateral Agent and each Authorized Representative (a) a certificate signed by an Officer of the Company (i) identifying the obligations so designated and the initial aggregate principal amount or face amount thereof, (ii) stating that such obligations are designated as First Lien Priority Indebtedness for purposes hereof, (iii) stating that such designation of such obligations as First Lien Priority Indebtedness complies with the terms of the Indenture and any agreement with respect to First Lien Priority Indebtedness then outstanding and (iv) specifying the name and address of the Authorized Representative for such obligations and (b) a fully executed First Lien Priority Secured Party Joinder. Each Authorized Representative agrees that upon the satisfaction of all conditions set forth in the preceding sentence, the Notes Collateral Agent shall act as agent under this Agreement for the Authorized Representative and the holders of such First Lien Priority Indebtedness and as collateral agent for the benefit of all Secured Parties, including without limitation, any Secured Parties that hold any such First Lien Priority Indebtedness, and each Authorized Representative agrees to the appointment, and acceptance of the appointment, of the Notes Collateral Agent as collateral agent for the Authorized Representative and the holders of such First Lien Priority Indebtedness as set forth in each First Lien Priority Secured Party Joinder and agrees, on behalf of itself and each Secured Party it represents, to be bound by this Agreement and the First Lien Priority Secured Party Joinder. Each Authorized Representative and holder of First Lien Priority Indebtedness acknowledges and agrees that the rights, privileges, immunities, limitations on liability, and indemnities set forth in this Agreement, the Indenture and any First Lien Priority Indebtedness Documents shall apply when the Notes Collateral Agent is acting on behalf of the holders of such First Lien Priority Indebtedness.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK.]

IN WITNESS WHEREOF, the Company and the Notes Collateral Agent have caused this Agreement to be duly executed and delivered by their duly authorized officers as of the date first above written.

PLEDGOR:

THE REALREAL, INC.

By: /s/Todd Suko
Name: Todd Suko
Title: Interim Chief Financial Officer, Chief Legal
Officer and Secretary

[Signature Page – Security Agreement]

NOTES COLLATERAL AGENT:

GLAS TRUST COMPANY LLC,
as Notes Collateral Agent

By: /s/ Katie Fisher
Name: Katie Fisher
Title: Vice President

[Signature Page – Security Agreement]

EXHIBIT A

[Form of]
JOINDER AGREEMENT

[Name of New Pledgor]
[Address of New Pledgor]

[Date]

Ladies and Gentlemen:

Reference is made to (i) that certain Indenture, dated as of [●], 2024 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, the "Indenture"), by and among The RealReal, Inc., a Delaware corporation (the "Company"), the Guarantors from time to time party thereto (the "Guarantors" and each, individually, a "Guarantor") and [●], as trustee and collateral agent for the Secured Parties (in such capacity, the "Notes Collateral Agent"), pursuant to which the Company issued \$[●] aggregate principal amount of 4.25%/8.75% PIK/Cash Senior Secured Notes due 2029 and (ii) the Security Agreement (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, the "Notes Security Agreement"), dated as of [●], 2024, made by the Company, as Pledgor, and the other Pledgors party thereto from time to time, in favor of the Notes Collateral Agent. Capitalized terms used but not otherwise defined herein shall have the meanings assigned to such terms in the Notes Security Agreement.

This Joinder Agreement (this "Agreement") supplements the Notes Security Agreement and is delivered by the undersigned, [] (the "Joining Entity"), pursuant to Section 3.5 of the Notes Security Agreement.

The Joining Entity hereby agrees to be bound as a Pledgor party to the Notes Security Agreement by all of the terms, covenants and conditions set forth therein to the same extent it would have been bound if it had been an original signatory to such agreement on the Issue Date.

Without limiting the generality of the foregoing, the Joining Entity hereby grants and pledges to the Notes Collateral Agent, for the benefit of the Secured Parties, as collateral security for the payment and performance in full when due of all of the Secured Obligations, a security interest in all of its right, title and interest in, to and under the Collateral and expressly assumes all obligations and

EXHIBIT A-1

liabilities of a Pledgor under the Notes Security Agreement. The Joining Entity hereby makes each of the representations and warranties contained in the Notes Security Agreement with respect to itself (giving effect to the schedule supplement referred to below).

Annexed hereto are supplements to each of the schedules to the Notes Security Agreement with respect to the Joining Entity. Such supplements shall be deemed to be part of the Security Agreement.

This Joinder Agreement and any amendments, waivers, consents or supplements hereto may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed to be an original, but all such counterparts together shall constitute one and the same agreement. Delivery of any executed counterpart of a signature page of this Joinder Agreement by facsimile or other electronic transmission shall be effective as delivery of a manually executed counterpart of this Joinder Agreement.

THIS JOINDER AGREEMENT SHALL BE GOVERNED BY, AND SHALL BE CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW.

[●] is entering into this Joinder solely in its capacity as Notes Collateral Agent under the Notes Security Agreement and not in its individual or corporate capacity. In acting hereunder, the Notes Collateral Agent shall be entitled to all of the rights, privileges, limitations on liability,

immunities and indemnities granted to it under the Indenture, the Notes Security Agreement and any corresponding provisions of any First Lien Priority Indebtedness Document, as if such rights, privileges, limitations on liability, immunities and indemnities were set forth herein.

[Remainder of Page Intentionally Blank]

EXHIBIT A-2

IN WITNESS WHEREOF, the Joining Entity has caused this Joinder Agreement to be executed and delivered by its duly authorized officer as of the date first above written.

[JOINING ENTITY]

By:

Name:

Title:

EXHIBIT A-1

AGREED TO AND ACCEPTED:

[●],
as Notes Collateral Agent

By:

Name:

Title:

EXHIBIT A-2

[Schedules to Joinder Agreement to be attached]

EXHIBIT A-3

EXHIBIT B

[Form of]
Copyright Security Agreement

Copyright Security Agreement, dated as of [], 20[] (this "Copyright Security Agreement"), by [] and [] (each individually, a "Pledgor" and, collectively, the "Pledgors"), in favor of [●], in its capacity as collateral agent (in such capacity and together with any successors and assigns in such capacity, the "Notes Collateral Agent") for the benefit of the Secured Parties pursuant to the Indenture (as defined below) and any First Lien Priority Indebtedness Documents, as pledgee, assignee and secured party.

Witnesseth:

Whereas, the Pledgors are party to that certain Security Agreement, dated as of [●], 2024 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, the "Notes Security Agreement"), in favor of the Notes Collateral Agent pursuant to which the Pledgors are required to execute and deliver this Copyright Security Agreement;

Now, Therefore, in consideration of the premises and to induce the Notes Collateral Agent, for the benefit of the Secured Parties, to enter into that certain Indenture, dated as of [●], 2024 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, the "Indenture"), by and among The RealReal, Inc., a Delaware corporation (the "Company") the Guarantors from time to time party thereto (the "Guarantors" and each, individually, a "Guarantor") and the Notes Collateral Agent, pursuant to which the Company issued \$[●] aggregate principal amount of 4.25%/8.75% PIK/Cash Senior Secured Notes due 2029, the Pledgors hereby agree with the Notes Collateral Agent as follows:

SECTION 1. Defined Terms. Unless otherwise defined herein, terms defined in the Notes Security Agreement and used herein have the meaning given to them in the Notes Security Agreement.

SECTION 2. Grant of Security Interest in Copyright Collateral. As collateral security for the payment and performance in full of all the Secured Obligations, each Pledgor hereby pledges and grants to the Notes Collateral Agent for the benefit of the Secured Parties a Lien on all of the right, title and interest of such Pledgor in, to and under the following Collateral, wherever located, whether now existing or hereafter arising or acquired from time to time (collectively, and, in each case, excluding any Excluded Assets, the "Copyright Collateral"):

(a) all Copyrights, including Registrations of Copyrights and exclusive licenses of Registrations of Copyrights listed on Schedule I hereof; and

(b) all Proceeds of any and all of the foregoing.

SECTION 3. Notes Security Agreement. The security interest granted pursuant to this Copyright Security Agreement is granted concurrently and in conjunction with the security interest granted to the Notes Collateral Agent pursuant to the Notes Security Agreement and Pledgors hereby acknowledge and affirm that the rights and remedies of the Notes Collateral Agent with respect to the

EXHIBIT B-1

security interest in the Copyright Collateral made and granted hereby are more fully set forth in the Notes Security Agreement, the terms and provisions of which are incorporated by reference herein as if fully set forth herein. In the event that any provision of this Copyright Security Agreement is deemed to be inconsistent with or in conflict with the Notes Security Agreement, the provisions of the Notes Security Agreement shall control.

SECTION 4. Counterparts. This Copyright Security Agreement and any amendments, waivers, consents or supplements hereto may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed to be an original, but all such counterparts together shall constitute one and the same agreement. This Copyright Security Agreement and any certificate, agreement or other document to be signed in connection with this Copyright Security Agreement and the transactions contemplated hereby shall be valid, binding, and enforceable against a party only when executed and delivered by an authorized individual on behalf of the party by means of (i) an original manual signature; (ii) a faxed, scanned, or photocopied manual signature; or (iii) in the case of this Copyright Security Agreement and any certificate, agreement or other document to be signed in connection with this Copyright Security Agreement and the transactions contemplated hereby (other than any Notes) any electronic signature permitted by the federal Electronic Signatures in Global and National Commerce Act, state enactments of the Uniform Electronic Transactions Act, and/or any other relevant electronic signatures law, including relevant provisions of the Uniform Commercial Code (collectively, "Signature Law"). Each electronic signature (except in the case of any Notes) or faxed, scanned, or photocopied manual signature shall for all purposes have the same validity, legal effect, and admissibility in evidence as an original manual signature. Each party hereto shall be entitled to conclusively rely upon, and shall have no liability with respect to, any faxed, scanned, or photocopied manual signature, or other electronic signature (except in the case of any Notes), of any party and shall have no duty to investigate, confirm or otherwise verify the validity or authenticity thereof. For avoidance of doubt, original manual signatures shall be used for execution or indorsement of writings when required under the Uniform Commercial Code or other Signature Law due to the character or intended character of the writings.

SECTION 5. Governing Law. THIS COPYRIGHT SECURITY AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW.

SECTION 6. [Reserved].

SECTION 7. Concerning the Notes Collateral Agent. [•] is entering into this Copyright Security Agreement solely in its capacity as Notes Collateral Agent under the Notes Security Agreement and not in its individual or corporate capacity. In acting hereunder, the Notes Collateral Agent shall be entitled to all of the rights, privileges, protections, limitations of liability, immunities and indemnities granted to it under the Indenture and any corresponding provisions of any First Lien Priority Indebtedness Document, as if such rights, privileges, protections, limitations of liability, immunities and indemnities were set forth herein.

[signature page follows]

EXHIBIT B-2

In Witness Whereof, each Pledgor has caused this Copyright Security Agreement to be executed and delivered by its duly authorized officer as of the date first set forth above.

Very truly yours,

[PLEDGORS]

By:

Name:

Title:

EXHIBIT B-3

Accepted and Agreed:

[●],
as Notes Collateral Agent

By:

Name:

Title:

EXHIBIT B-4

SCHEDULE I
to
COPYRIGHT SECURITY AGREEMENT

COPYRIGHT REGISTRATIONS AND COPYRIGHT APPLICATIONS

Owner	Title/Name	Country	Application/ Registration No.	Brief Description	Status

Copyright Licenses:

[]

EXHIBIT B-5

EXHIBIT C

[Form of]
Patent Security Agreement

Patent Security Agreement, dated as of [], 20[] (this "Patent Security Agreement"), by [] and [] (each individually, a "Pledgor" and, collectively, the "Pledgors"), in favor of [●], in its capacity as collateral agent (in such capacity and together with any successors and assigns in such capacity, the "Notes Collateral Agent") for the benefit of the Secured Parties pursuant to the Indenture (as defined below) and any First Lien Priority Indebtedness Documents, as pledgee, assignee and secured party.

Witnesseth:

Whereas, the Pledgors are party to that certain Security Agreement, dated as of [●], 2024 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, the "Notes Security Agreement"), in favor of the Notes Collateral Agent pursuant to which the Pledgors are required to execute and deliver this Patent Security Agreement;

Now, Therefore, in consideration of the premises and to induce the Notes Collateral Agent, for the benefit of the Secured Parties, to enter into that certain Indenture, dated as of [●], 2024 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, the "Indenture"), by and among The RealReal, Inc., a Delaware corporation (the "Company"), the Guarantors from time to time party thereto

(the "Guarantors" and each, individually, a "Guarantor") and the Notes Collateral Agent, pursuant to which the Company issued \$[●] aggregate principal amount of 4.25%/8.75% PIK/Cash Senior Secured Notes due 2029, the Pledgors hereby agree with the Notes Collateral Agent as follows:

SECTION 1. Defined Terms. Unless otherwise defined herein, terms defined in the Notes Security Agreement and used herein have the meaning given to them in the Notes Security Agreement.

SECTION 2. Grant of Security Interest in Patent Collateral. As collateral security for the payment and performance in full of all the Secured Obligations, each Pledgor hereby pledges and grants to the Notes Collateral Agent for the benefit of the Secured Parties a Lien on all of the right, title and interest of such Pledgor in, to and under the following Collateral, wherever located, and whether now existing or hereafter arising or acquired from time to time (collectively, and, in each case, excluding any Excluded Assets, the "Patent Collateral"):

(a) all Patents, including those Registrations and applications of Patents set forth on Schedule I to this Patent Security Agreement; and

EXHIBIT C-1

(b) all Proceeds of any and all of the foregoing.

SECTION 3. Notes Security Agreement. The security interest granted pursuant to this Patent Security Agreement is granted concurrently and in conjunction with the security interest granted to the Notes Collateral Agent pursuant to the Notes Security Agreement and Pledgors hereby acknowledge and affirm that the rights and remedies of the Notes Collateral Agent with respect to the security interest in the Patent Collateral made and granted hereby are more fully set forth in the Notes Security Agreement, the terms and provisions of which are incorporated by reference herein as if fully set forth herein. In the event that any provision of this Patent Security Agreement is deemed to be inconsistent with or in conflict with the Notes Security Agreement, the provisions of the Notes Security Agreement shall control.

SECTION 4. Counterparts. This Patent Security Agreement and any amendments, waivers, consents or supplements hereto may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed to be an original, but all such counterparts together shall constitute one and the same agreement. This Patent Security Agreement and any certificate, agreement or other document to be signed in connection with this Patent Security Agreement and the transactions contemplated hereby shall be valid, binding, and enforceable against a party only when executed and delivered by an authorized individual on behalf of the party by means of (i) an original manual signature; (ii) a faxed, scanned, or photocopied manual signature; or (iii) in the case of this Patent Security Agreement and any certificate, agreement or other document to be signed in connection with this Patent Security Agreement and the transactions contemplated hereby (other than any Notes) any electronic signature permitted by the federal Electronic Signatures in Global and National Commerce Act, state enactments of the Uniform Electronic Transactions Act, and/or any other relevant electronic signatures law, including relevant provisions of the Uniform Commercial Code (collectively, "Signature Law"). Each electronic signature (except in the case of any Notes) or faxed, scanned, or photocopied manual signature shall for all purposes have the same validity, legal effect, and admissibility in evidence as an original manual signature. Each party hereto shall be entitled to conclusively rely upon, and shall have no liability with respect to, any faxed, scanned, or photocopied manual signature, or other electronic signature (except in the case of any Notes), of any party and shall have no duty to investigate, confirm or otherwise verify the validity or authenticity thereof. For avoidance of doubt, original manual signatures shall be used for execution or indorsement of writings when required under the Uniform Commercial Code or other Signature Law due to the character or intended character of the writings.

SECTION 5. Governing Law. THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW.

SECTION 6. [Reserved].

SECTION 7. Concerning the Notes Collateral Agent. [•] is entering into this Patent Security Agreement solely in its capacity as Notes Collateral Agent under the Notes Security Agreement and not in its individual or corporate capacity. In acting hereunder, the Notes Collateral Agent shall be

EXHIBIT C-2

entitled to all of the rights, privileges, protections, limitations of liability, immunities and indemnities granted to it under the Indenture and any corresponding provisions of any First Lien Priority Indebtedness Document, as if such rights, privileges, protections, limitations of liability, immunities and indemnities were set forth herein.

[signature page follows]

EXHIBIT C-3

In Witness Whereof, each Pledgor has caused this Patent Security Agreement to be executed and delivered by its duly authorized officer as of the date first set forth above.

Very truly yours,

[PLEDGORS]

By:

Name:

Title:

EXHIBIT C-4

Accepted and Agreed:

[●],
as Notes Collateral Agent

By:
Name:
Title:

EXHIBIT C-5

SCHEDULE I
to
PATENT SECURITY AGREEMENT

PATENTS AND PATENT APPLICATIONS

Owner	Serial Number	Country	Title	Brief Description	Status

Patent Licenses:

[]

EXHIBIT C-6

[Form of]
Trademark Security Agreement

Trademark Security Agreement, dated as of [], 20[] (this “Trademark Security Agreement”), by [] and [] (each individually, a “Pledgor” and, collectively, the “Pledgors”), in favor of [●], in its capacity as collateral agent (in such capacity and together with any successors and assigns in such capacity, the “Notes Collateral Agent”) for the benefit of the Secured Parties pursuant to the Indenture (as defined below) and any First Lien Priority Indebtedness Documents, as pledgee, assignee and secured party.

Witnesseth:

Whereas, the Pledgors are party to that certain Security Agreement, dated as of [●], 2024 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, the “Notes Security Agreement”), in favor of the Notes Collateral Agent pursuant to which the Pledgors are required to execute and deliver this Trademark Security Agreement;

Now, Therefore, in consideration of the premises and to induce the Notes Collateral Agent, for the benefit of the Secured Parties, to enter into that certain Indenture, dated as of [●], 2024 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, the “Indenture”), by and among The RealReal, Inc., a Delaware corporation (the “Company”), the Guarantors from time to time party thereto (the “Guarantors” and each, individually, a “Guarantor”) and the Notes Collateral Agent, pursuant to which the Company issued \$[●] aggregate principal amount of 4.25%/8.75% PIK/Cash Senior Secured Notes due 2029, the Pledgors hereby agree with the Notes Collateral Agent as follows:

SECTION 1. Defined Terms. Unless otherwise defined herein, terms defined in the Notes Security Agreement and used herein have the meaning given to them in the Notes Security Agreement.

SECTION 2. Grant of Security Interest in Trademark Collateral. As collateral security for the payment and performance in full of all the Secured Obligations, each Pledgor hereby pledges and grants to the Notes Collateral Agent for the benefit of the Secured Parties a Lien on all of the right, title and interest of such Pledgor in, to and under the following Collateral, wherever located, whether now existing or hereafter arising or acquired from time to time (collectively, and, in each case, excluding any Excluded Assets, the “Trademark Collateral”):

(a) all Trademarks, including those Registrations and applications of Trademarks set forth on Schedule I to this Trademark Security Agreement;

EXHIBIT D-1

(b) all Goodwill associated with such Trademarks; and

(c) all Proceeds of any and all of the foregoing.

SECTION 3. Notes Security Agreement. The security interest granted pursuant to this Trademark Security Agreement is granted in conjunction with the security interest granted to the Notes Collateral Agent pursuant to the Notes Security Agreement and Pledgors hereby acknowledge and affirm that the rights and remedies of the Notes Collateral Agent with respect to the security interest in the Trademark Collateral made and granted hereby are more fully set forth in the Notes Security Agreement, the terms and provisions of which are incorporated by reference herein as if fully set forth herein. In the event that any provision of this Trademark Security Agreement is deemed to be inconsistent with or in conflict with the Notes Security Agreement, the provisions of the Notes Security Agreement shall control.

SECTION 4. Counterparts. This Trademark Security Agreement and any amendments, waivers, consents or supplements hereto may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed to be an original, but all such counterparts together shall constitute one and the same agreement. This Trademark Security Agreement and any certificate, agreement or other document to be signed in connection with this Trademark Security Agreement and the transactions contemplated hereby shall be valid, binding, and enforceable against a party only when executed and delivered by an authorized individual on behalf of the party by means of (i) an original manual signature; (ii) a faxed, scanned, or photocopied manual signature; or (iii) in the case of this Trademark Security Agreement and any certificate, agreement or other document to be signed in connection with this Trademark Security Agreement and the transactions contemplated hereby (other than any Notes) any electronic signature permitted by the federal Electronic Signatures in Global and National Commerce Act, state enactments of the Uniform Electronic Transactions Act, and/or any other relevant electronic signatures law, including relevant provisions of the Uniform Commercial Code (collectively, "Signature Law"). Each electronic signature (except in the case of any Notes) or faxed, scanned, or photocopied manual signature shall for all purposes have the same validity, legal effect, and admissibility in evidence as an original manual signature. Each party hereto shall be entitled to conclusively rely upon, and shall have no liability with respect to, any faxed, scanned, or photocopied manual signature, or other electronic signature (except in the case of any Notes), of any party and shall have no duty to investigate, confirm or otherwise verify the validity or authenticity thereof. For avoidance of doubt, original manual signatures shall be used for execution or indorsement of writings when required under the Uniform Commercial Code or other Signature Law due to the character or intended character of the writings.

SECTION 5. Governing Law. THIS TRADEMARK SECURITY AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW.

SECTION 6. [Reserved].

SECTION 7. Concerning the Notes Collateral Agent. [●] is entering into this Trademark Security Agreement solely in its capacity as Notes Collateral Agent under the Notes Security

EXHIBIT D-2

Agreement and not in its individual or corporate capacity. In acting hereunder, the Notes Collateral Agent shall be entitled to all of the rights, privileges, protections, limitations of liability, immunities and indemnities granted to it under the Indenture and any corresponding provisions of any

First Lien Priority Indebtedness Document, as if such rights, privileges, protections, limitations of liability, immunities and indemnities were set forth herein.

[signature page follows]

EXHIBIT D-3

In Witness Whereof, each Pledgor has caused this Trademark Security Agreement to be executed and delivered by its duly authorized officer as of the date first set forth above.

Very truly yours,

[PLEDGORS]

By:

Name:

Title:

EXHIBIT D-4

Accepted and Agreed:

[•]

as Notes Collateral Agent

By:

Name:

Title:

EXHIBIT D-5

SCHEDULE I
to
TRADEMARK SECURITY AGREEMENT

TRADEMARK REGISTRATIONS AND TRADEMARK APPLICATIONS

Owner	Mark	Serial No.	Filing Date	Status	Country	Registration No.	Registration date	Description

Trademark Licenses:

[]

EXHIBIT D-6

SCHEDULE 1.01A

[Attached]

SCHEDULE 1.01A-1

SCHEDULE 1.01B

[Attached]

SCHEDULE 1.01B-1

SCHEDULE 1.01C

[Attached]

SCHEDULE 1.01C-1

SCHEDULE 1.01D

[Attached]

SCHEDULE 1.01D-1

SCHEDULE 1.01E

[Attached]

SCHEDULE 1.01E-1

SCHEDULE 3.4(a)

[Attached]

SCHEDULE 3.4(a)-1

SCHEDULE 3.4(e)

[Attached]

SCHEDULE 3.4(e)-1

SCHEDULE 4.3

[Attached]

Exhibit E-1

EXHIBIT E

to

NOTES SECURITY AGREEMENT

[FORM OF]

FIRST LIEN PRIORITY SECURED PARTY JOINDER

[Name of Authorized Representative]

[Address of Authorized Representative]

[Date]

The undersigned is the Authorized Representative for [list names of new First Lien Priority Secured Parties] who have evidenced in writing their intent and consent to become Secured Parties (as defined in the Indenture) (the "First Lien Priority Secured Parties") under that certain Security Agreement, dated as of [●], 2024 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, the "Notes Security Agreement"), by and among The RealReal, Inc., a Delaware corporation (the "Company"), each of the other pledgors party thereto from time to time (each, a "Pledgor" and collectively, the "Pledgors") and [●], as the Notes Collateral Agent. Terms used herein but not defined herein have the meanings assigned to such terms in the Notes Security Agreement.

In consideration of the foregoing, the undersigned Authorized Representative hereby:

(i) represents that the Authorized Representative has been duly authorized by the First Lien Priority Secured Parties to become a party to the Notes Security Agreement on behalf of the First Lien Priority Secured Parties under that [DESCRIBE OPERATIVE AGREEMENT] (the "First Lien Priority Indebtedness") and to act as the Authorized Representative for the First Lien Priority Secured Parties, including to appoint the Notes Collateral Agent as set forth below;

(ii) acknowledges that the Authorized Representative has received a copy of the Notes Security Agreement and the Indenture, and accepts, acknowledges and agrees for itself and each First Lien Priority Secured Party to be bound in all respects by the terms of the Notes Security Agreement, including the provisions of the Indenture incorporated therein by reference;

(iii) pursuant to Section 11.15 of the Notes Security Agreement, appoints and authorizes the Notes Collateral Agent, as Notes Collateral Agent for the First Lien Priority Secured Parties under the Notes Security Agreement, to take such action as agent on its behalf and on behalf of all other Secured Parties and to exercise such powers under the Notes Security Agreement as are delegated to the Notes Collateral Agent by the terms thereof;

(iv) agrees to serve as Authorized Representative for the First Lien Priority Secured Parties with respect to the First Lien Priority Indebtedness and agrees on its own behalf and on behalf of the First Lien Priority Secured Parties to be bound by the terms thereof applicable to holders of First Lien Priority Indebtedness, and agrees that its address for receiving notices pursuant to the Notes Security Agreement and any First Lien Priority Indebtedness Documents shall be as follows:

[Address]; and

Exhibit E-1

(v) acknowledges and agrees, on behalf of itself and each holder of the First Lien Priority Indebtedness (A) that the Notes Collateral Agent shall be entitled to all of its rights, protections, privileges, indemnities, limitations of liability, and immunities set forth in the Indenture (including, but not limited to, those set forth in Articles 7 and 10 thereof) in connection with its acting as Notes Collateral Agent for the holders of the First Lien Priority Indebtedness; and (B) that the holders of the First Lien Priority Indebtedness shall be required to give the Notes Collateral Agent written direction and an indemnity satisfactory to the Notes Collateral Agent (as contemplated in Articles 7 and 10 of the Indenture), to the extent requested by the Notes Collateral Agent, in connection with any request by such holders of First Lien Priority Indebtedness to enforce any remedies, or otherwise take or refrain from taking action, hereunder.

The Notes Collateral Agent, by acknowledging and agreeing to this First Lien Priority Secured Party Joinder, and in consideration of the foregoing representations, warranties, covenants and agreements of the Authorized Representative and each other First Lien Priority Secured Party, accepts the appointment set forth in clause (iii) above. The parties hereto agree that the Notes Collateral Agent shall be afforded all of the rights, protections, indemnities, limitations of liability, immunities and privileges afforded to the Notes Collateral Agent under the Indenture and any First Lien Priority Indebtedness Documents in connection with its execution of this First Lien Priority Secured Party Joinder and the performance of its obligations with respect thereto.

The recitals contained herein shall be taken as the statements of the Authorized Representative and the Notes Collateral Agent assumes no responsibility for their correctness. The Notes Collateral Agent makes no representations as to the validity or sufficiency of this First Lien Priority Secured Party Joinder.

THIS FIRST LIEN PRIORITY SECURED PARTY JOINDER SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW.

[Signature Pages Follow]

Exhibit E-2

IN WITNESS WHEREOF, the undersigned has caused this First Lien Priority Secured Party Joinder to be duly executed by its authorized officer as of the ____ day of _____, 20____.

AUTHORIZED REPRESENTATIVE:

By:
Name:
Title:

ACCEPTED AND ACKNOWLEDGED BY:

NOTES COLLATERAL AGENT:

[●],
AS NOTES COLLATERAL AGENT

By:
Name:
Title:

COMPANY:

THE REALREAL, INC.

By:
Name:
Title:

Exhibit E-3

66

Exhibit 31.1

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

I, John Koryl, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of The RealReal, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

- (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
- (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
- (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

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

- (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
- (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: **May 7, 2024** August 6, 2024

By: _____ */s/ John Koryl*
John Koryl
Chief Executive Officer

Exhibit 31.2

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

I, Ajay Madan Gopal, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of The RealReal, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

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

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

- All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
- Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: **May 7, 2024** August 6, 2024

By: _____ /s/ Ajay Madan Gopal
Ajay Madan Gopal
Chief Financial Officer

Exhibit 32.1

**CERTIFICATION PURSUANT TO
18 U.S.C. SECTION 1350, AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Quarterly Report of The RealReal, Inc. (the "Company") on Form 10-Q for the period ending **March 31, 2024** June 30, 2024 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I certify, pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, that, to my knowledge:

- The Report fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: **May 7, 2024** August 6, 2024

By: _____ /s/ John Koryl
John Koryl
Chief Executive Officer

Exhibit 32.2

**CERTIFICATION PURSUANT TO
18 U.S.C. SECTION 1350, AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Quarterly Report of The RealReal, Inc. (the "Company") on Form 10-Q for the period ending **March 31, 2024** June 30, 2024 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I certify, pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, that, to my knowledge:

(1) The Report fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
(2) The information contained in the Report fairly presents, in all material respects, the financial condition and result of operations of the Company.

Date: **May 7, 2024** **August 6, 2024**

By:

/s/ Ajay Madan Gopal

Ajay Madan Gopal
Chief Financial Officer

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