

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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MICHAEL SANDERS, Individually and on
behalf of all others similarly situated,

Plaintiff,

v.

THE REALREAL, INC., *et al.*,

Defendants.

Case No: 5:19-cv-07737-EJD

~~PROPOSED~~ ORDER AND FINAL
JUDGMENT

CLASS ACTION

Hon. Edward J. Davila

1 On the 28th day of July, 2022 a hearing having been held before this Court to determine:
2 (1) whether the terms and conditions of the Stipulation of Settlement, dated November 5, 2021
3 (“Stipulation”) are fair, reasonable, and adequate for the settlement of all claims asserted by the
4 Settlement Class against Defendants (as defined in the Stipulation), including the release of the
5 Released Claims against the Released Parties, and should be approved; (2) whether judgment
6 should be entered dismissing the Action with prejudice; (3) whether to approve the proposed Plan
7 of Allocation as a fair and reasonable method to allocate the Net Settlement Fund among
8 Settlement Class Members; and (4) whether and in what amount to award Lead Counsel fees and
9 reimbursement of expenses; and

10 The Court having considered all matters submitted to it at the hearing and otherwise; and

11 It appearing in the record that the Long Notice substantially in the form approved by the
12 Court in the Court’s Order Preliminarily Approving Settlement and Providing for Notice, dated
13 March 24, 2022 (“Preliminary Approval Order”) was mailed to all reasonably identifiable
14 Settlement Class Members and posted to the website of the Claims Administrator, both in
15 accordance with the Preliminary Approval Order and the specifications of the Court; and

16 It appearing in the record that the link to the location of the electronic Long Notice and
17 Proof of Claim substantially in the form approved by the Court in the Preliminary Approval Order
18 was emailed to identifiable Settlement Class Members when an email address was provided to
19 the Claims Administrator in accordance with the Preliminary Approval Order and the
20 specifications of the Court; and

21 It appearing in the record that the Summary Notice substantially in the form approved by
22 the Court in the Preliminary Approval Order was published electronically once on the
23 *GlobeNewswire* and in print once in the *Investor’s Business Daily*.

24 NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED
25 THAT:

26 1. This Order and Judgment incorporates by reference the definitions in the
27 Stipulation, and all capitalized terms used herein shall have the same meanings as set forth therein.
28

1 2. The Court has jurisdiction over the subject matter of the Action, Plaintiffs, all
2 Settlement Class Members, and Defendants.

3 3. The Court finds that, for settlement purposes only, the prerequisites for a class
4 action under Rule 23(a) and (b)(3) of the Federal Rules of Civil Procedure have been satisfied in
5 that:

- 6 a. the number of Settlement Class Members is so numerous that joinder of all
7 members thereof is impracticable;
- 8 b. there are questions of law and fact common to the Settlement Class;
- 9 c. Plaintiffs' claims are typical of the claims of the Settlement Class they seek
10 to represent;
- 11 d. Plaintiffs and Lead Counsel fairly and adequately represent the interests of
12 the Settlement Class;
- 13 e. questions of law and fact common to the members of the Settlement Class
14 predominate over any questions affecting only individual members of the
15 Settlement Class; and
- 16 f. a class action is superior to other available methods for the fair and efficient
17 adjudication of this Action, considering:
 - 18 i. the interests of the Settlement Class Members in individually
19 controlling the prosecution of the separate actions;
 - 20 ii. the extent and nature of any litigation concerning the controversy
21 already commenced by Settlement Class Members;
 - 22 iii. the desirability or undesirability of concentrating the litigation of
23 these claims in this particular forum; and
 - 24 iv. the difficulties likely to be encountered in the management of the
25 class action.

26 4. The Court hereby finally certifies this action as a class action for purposes of the
27 Settlement, pursuant to Rule 23(a) and (b)(3) of the Federal Rules of Civil Procedure, on behalf
28 of all persons and entities who purchased TRR common stock between June 27, 2019 and

1 November 20, 2019, both dates inclusive, and were damaged thereby. Included in the Settlement
2 Class are all Persons who purchased TRR common stock pursuant to and/or traceable to TRR's
3 Registration Statement issued in connection with TRR's June 27, 2019 IPO and all persons and
4 entities who purchased TRR common stock during the Settlement Class Period at artificially
5 inflated prices and were damaged thereby. Excluded from the Class are: (a) persons who suffered
6 no compensable losses; and (b) Defendants; the present and former officers and directors of the
7 Company at all relevant times; members of their immediate families and their legal
8 representatives, heirs, successors, or assigns, and any entity in which any of the Defendants, or
9 any person excluded under this subsection (b), has or had a majority ownership interest at any
10 time. Also excluded from the Settlement Class are all putative members of the Settlement Class
11 who have excluded themselves by filing a valid and timely request for exclusion, as listed on
12 Schedule A hereto.

13 5. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, for the purposes of
14 this Settlement, Plaintiffs are certified as the class representatives on behalf of the Settlement
15 Class ("Class Representatives") and Lead Counsel previously selected by Plaintiffs and appointed
16 by the Court is hereby appointed as Class Counsel for the Settlement Class ("Class Counsel").

17 6. In accordance with the Court's Preliminary Approval Order, the Court hereby
18 finds that the forms and methods of notifying the Settlement Class of the Settlement and its terms
19 and conditions met the requirements of due process, Rule 23 of the Federal Rules of Civil
20 Procedure, and Section 21D(a)(7) of the Securities Exchange Act of 1934, 15 U.S.C. § 78u-
21 4(a)(7), as amended by the Private Securities Litigation Reform Act of 1995; constituted the best
22 notice practicable under the circumstances; and constituted due and sufficient notice of these
23 proceedings and the matters set forth herein, including the Settlement and Plan of Allocation, to
24 all persons and entities entitled to such notice. No Settlement Class Member is relieved from the
25 terms and conditions of the Settlement, including the releases provided for in the Stipulation,
26 based upon the contention or proof that such Settlement Class Member failed to receive actual or
27 adequate notice. A full opportunity has been offered to the Settlement Class Members to object
28 to the proposed Settlement and to participate in the hearing thereon. The Court further finds that

1 the notice provisions of the Class Action Fairness Act, 28 U.S.C. § 1715, were fully discharged.
2 Thus, it is hereby determined that all Settlement Class Members are bound by this Order and
3 Judgment except those persons listed on Schedule A to this Order and Judgment.

4 7. The Settlement is approved as fair, reasonable, and adequate under Rule 23 of the
5 Federal Rules of Civil Procedure. This Court further finds that the Settlement set forth in the
6 Stipulation is the result of good faith, arm's-length negotiations between experienced counsel
7 representing the interests of Class Representatives, Settlement Class Members, and Defendants.
8 The Parties are directed to consummate the Settlement in accordance with the terms and
9 provisions of the Stipulation.

10 8. The Action and all claims contained therein, as well as the Released Claims, are
11 dismissed with prejudice as against Defendants and the Released Parties. The Parties are to bear
12 their own costs, except as otherwise provided in the Stipulation.

13 9. The Releasing Parties, on behalf of themselves, their successors and assigns, and
14 any other Person claiming (now or in the future) through or on behalf of them, regardless of
15 whether any such Releasing Party ever seeks or obtains by any means, including without
16 limitation by submitting a Proof of Claim and Release Form, any disbursement from the
17 Settlement Fund, shall be deemed to have, and by operation of this Order and Judgment shall
18 have, fully, finally, and forever released, relinquished, and discharged all Released Claims against
19 the Released Parties. The Releasing Parties shall be deemed to have, and by operation of this
20 Order and Judgment shall have, covenanted not to sue the Released Parties with respect to any
21 and all Released Claims in any forum and in any capacity. The Releasing Parties shall be and
22 hereby are permanently barred and enjoined from asserting, commencing, prosecuting, instituting,
23 assisting, instigating, or in any way participating in the commencement or prosecution of any
24 action or other proceeding, in any forum, asserting any Released Claim, in any capacity, against
25 any of the Released Parties. Nothing contained herein shall, however, bar the Releasing Parties
26 from bringing any action or claim to enforce the terms of the Stipulation or this Order and
27 Judgment.

1 10. With respect to any and all Released Claims, Class Representatives and the
2 Released Parties shall waive and each of the Settlement Class Members shall be deemed to have
3 waived, and by operation of this Final Judgment shall have waived, the provisions, rights, and
4 benefits of California Civil Code § 1542, which provides:

5 A general release does not extend to claims that the creditor or
6 releasing party does not know or suspect to exist in his or her favor
7 at the time of executing the release and that, if known by him or
8 her, would have materially affected his or her settlement with the
debtor or released party.

9 11. With respect to any and all Released Claims, Class Representatives and the
10 Released Parties shall waive and each of the Settlement Class Members shall be deemed to have
11 waived, and by operation of this Final Judgment shall have waived, any and all provisions, rights
12 and benefits conferred by any law of any state, territory, foreign country or principle of common
13 law, which is similar, comparable or equivalent to California Civil Code § 1542. Class
14 Representatives, the Released Parties and/or one or more Settlement Class Members may
15 hereafter discover facts in addition to or different from those which he, she or it now knows or
16 believes to be true with respect to the Released Claims, but Class Representatives, the Released
17 Parties and each Settlement Class Member, upon the Effective Date, shall be deemed to have, and
18 by operation of this Final Judgment shall have, fully, finally and forever settled and released, any
19 and all Released Claims, known or unknown, suspected or unsuspected, contingent or non-
20 contingent, whether or not concealed or hidden, which now exist, or heretofore have existed, upon
21 any theory of law or equity now existing or coming into existence in the future, including, but not
22 limited to, conduct which is negligent, intentional, with or without malice, or a breach of fiduciary
23 duty, law or rule, without regard to the subsequent discovery or existence of such different or
24 additional facts. Class Representatives and the Released Parties acknowledge, and the Settlement
25 Class Members shall be deemed by operation of this Final Judgment to have acknowledged, that
26 the foregoing waiver was separately bargained for and a key element of the Settlement.

27 12. Upon the Effective Date, the Released Parties shall be deemed to have, and by
28 operation of the Final Judgment shall have, fully, finally, and forever released, relinquished, and

1 discharged all claims they may have against the Releasing Parties related to the Releasing Parties'
2 prosecution of the Action or any other known or unknown counter-claim related thereto and shall
3 have covenanted not to sue the Releasing Parties with respect to any counter claim, claim, or
4 sanction related to the Released Claims, and shall be permanently barred and enjoined from
5 asserting, commencing, prosecuting, instituting, assisting, instigating, or in any way participating
6 in the commencement or prosecution of any action or other proceeding, in any forum, asserting
7 any such claim, in any capacity, against any of the Releasing Parties. Nothing contained herein
8 shall, however, bar the Released Parties from bringing any action or claim to enforce the terms of
9 this Stipulation or the Final Judgment.

10 13. The Court hereby finds that the proposed Plan of Allocation is a fair and reasonable
11 method to allocate the Net Settlement Fund among Settlement Class Members, and Class Counsel
12 and the Claims Administrator are directed to administer the Plan of Allocation in accordance with
13 its terms and the terms of the Stipulation.

14 14. The Court finds that the Parties and their counsel have complied with all
15 requirements of Rule 11 of the Federal Rules of Civil Procedure and the Private Securities
16 Litigation Reform Act of 1995 as to all proceedings herein.

17 15. Neither this Order and Final Judgment, the Stipulation (nor the Settlement
18 contained therein), nor any of its terms and provisions, nor any of the negotiations, documents, or
19 proceedings connected with them is evidence, or an admission or concession by any Party or their
20 counsel, any Settlement Class Member, or any of the Released Parties, of any fault, liability or
21 wrongdoing whatsoever, as to any facts or claims alleged or asserted in the Action or could have
22 been alleged or asserted, or any other actions or proceedings, or as to the validity or merit of any
23 of the claims or defenses alleged or asserted or could have been alleged or asserted in any such
24 action or proceeding. This Final Judgment is not a finding or evidence of the validity or invalidity
25 of any claims or defenses in the Action, any wrongdoing by any Party, Settlement Class Member,
26 or any of the Released Parties, or any damages or injury to any Party, Settlement Class Member,
27 or any Released Parties. Neither this Final Judgment, the Stipulation (nor the Settlement contained
28 therein), nor any of its terms and provisions, nor any of the negotiations, documents or

1 proceedings connected with therewith (a) shall (i) be argued to be, used or construed as, offered
2 or received in evidence as, or otherwise constitute an admission, concession, presumption, proof,
3 evidence, or a finding of any, liability, fault, wrongdoing, injury or damages, or of any wrongful
4 conduct, acts or omissions on the part of any Released Party, or of any infirmity of any defense,
5 or of any damages to Class Representatives or any other Settlement Class Member, or (ii)
6 otherwise be used to create or give rise to any inference or presumption against any of the
7 Released Parties concerning any fact or any purported liability, fault, or wrongdoing of the
8 Released Parties or any injury or damages to any person or entity, or (b) shall otherwise be
9 admissible, referred to or used in any proceeding of any nature, for any purpose whatsoever;
10 provided, however, that this Final Judgment, the Stipulation, or the documents related thereto
11 may be introduced in any proceeding, whether in the Court or otherwise, as may be necessary to
12 enforce the Settlement or Final Judgment, or as otherwise required by law:

13 16. Except as otherwise provided herein or in the Stipulation, all funds held by the
14 Escrow Agent shall be deemed to be in *custodia legis* and shall remain subject to the jurisdiction
15 of the Court until such time as the funds are distributed or returned pursuant to the Stipulation
16 and/or further order of the Court.

17 17. This Court hereby retains exclusive jurisdiction over the Parties and the Settlement
18 Class Members for all matters relating to the Action, including the administration, interpretation,
19 effectuation, or enforcement of the Stipulation and this Order and Final Judgment, and including
20 any application for fees and expenses incurred in connection with administering and distributing
21 the Settlement proceeds to the Settlement Class Members.

22 18. Without further order of the Court, Defendants and Class Representatives may
23 agree to reasonable extensions of time to carry out any of the provisions of the Stipulation.

24 19. There is no just reason for delay in the entry of this Order and Judgment and
25 immediate entry by the Clerk of the Court is expressly directed pursuant to Rule 54(b) of the
26 Federal Rules of Civil Procedure.

1 20. The finality of this Order and Final Judgment shall not be affected, in any manner,
2 by rulings that the Court may make on the proposed Plan of Allocation or Class Counsel’s
3 application for an award of attorneys’ fees and expenses.

4 21. In the event the Settlement is not consummated in accordance with the terms of
5 the Stipulation, then the Stipulation and this Order and Final Judgment (including any
6 amendment(s) thereof, and except as expressly provided in the Stipulation or by order of the
7 Court) shall be null and void, of no further force or effect, and without prejudice to any Party, and
8 may not be introduced as evidence or used in any action or proceeding by any Person against the
9 Parties or the Released Parties, and each Party shall be restored to his, her, or its respective
10 litigation positions as they existed prior to July 26, 2021, pursuant to the terms of the Stipulation.

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13 Dated: July 28, 2022



HON. EDWARD J. DAVILA
UNITED STATES DISTRICT JUDGE

SCHEDULE A

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1. Nadia Rivera
2. Rita Azrelyant