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**UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES**

In the Matter of)	
)	
Tapestry, Inc., and)	DOCKET NO. 9429
)	
Capri Holdings Limited,)	
)	
Respondents.)	
)	

NON-PARTY THE REALREAL, INC.’S CONSENT MOTION FOR *IN CAMERA* TREATMENT

Pursuant to Rule 3.45 of the Federal Trade Commission’s Rules of Practice, 16 C.F.R. § 3.45(b), non-party The RealReal, Inc. (“TRR”) respectfully moves this Court for *in camera* treatment of a spreadsheet produced by TRR containing competitively sensitive, confidential business information (the “Confidential Document”). TRR produced this document in response to third-party subpoenas in connection with a civil action involving the respondents in this matter. The Federal Trade Commission (“FTC”) and respondent Tapestry, Inc. (“Tapestry”) have notified TRR that they intend to introduce TRR’s Confidential Document into evidence at the administrative trial in this matter. *See* Letter from the Federal Trade Commission dated August 30, 2024 (attached as Exhibit A) and Email from counsel for Tapestry, Inc. dated August 30, 2024 (attached as Exhibit B). TRR has conferred with Complaint Counsel for the FTC and Counsel for Tapestry, and the parties have indicated that they would not oppose TRR’s motion.

The Confidential Document, which contains TRR’s highly sensitive business information, warrants protection from public disclosure due to the competitive injury that would result from it. For the reasons discussed in this motion, TRR requests that this Court afford *in camera* treatment of the Confidential Document. In support of this motion, TRR submits the

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Declaration of Todd Suko (“Suko Declaration”) (Exhibit C), which provides additional details on the Confidential Document.

Dated: September 10, 2024

Respectfully Submitted,

/s/ Leigh M. Nathanson

Leigh M. Nathanson

KING & SPALDING LLP

1185 Avenue of the Americas

34th Floor

New York, NY 10036

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Counsel for Non-Party The RealReal, Inc.

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In the Matter of)	
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**MEMORANDUM OF LAW IN SUPPORT OF NON-PARTY THE REALREAL, INC.’S
CONSENT MOTION FOR *IN CAMERA* TREATMENT**

TRR is seeking *in camera* treatment for a spreadsheet which TRR produced in response to non-party subpoenas in a civil action related to this matter. The spreadsheet contains TRR’s confidential, commercially sensitive business information. For the reasons discussed in this motion, TRR requests that this Court afford its confidential business information *in camera* treatment indefinitely. In support of TRR’s motion for *in camera* treatment, TRR relies on the Declaration of Todd Suko (“Suko Declaration”), attached as Exhibit C, which provides additional details on the document for which TRR is seeking *in camera* treatment.

I. TRR’s Business

As explained on its website, TRR began in 2011 as a start-up company and is now the world’s largest and most trusted resource for authenticated luxury resale. TRR is a leader in the market for luxury consignment, providing a safe, secure, and reliable platform for the resale of high-end clothing, handbags, fine jewelry and watches, art, and home items. TRR’s mission is to enable more people to own and appreciate luxury while maximizing the value of their investments. Suko Decl. ¶ 3.

TRR has multiple physical locations across the United States, including in New York, Greenwich, Chicago, Dallas, Los Angeles, Palo Alto, Marin, Palm Beach, Newport Beach, and

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San Francisco. TRR provides both an online and a brick-and-mortar platform where consumers-turned consignors can sell and buy secondhand luxury items from hundreds of brands. TRR does not produce or manufacture the products it sells; rather, it functions as a marketplace and service for consumers to consign and resell their secondhand luxury items. *Id.* ¶ 4.

II. The Documents for Which Protection is Sought

TRR seeks *in camera* treatment for the following Confidential Document, a copy of which is attached as Exhibit D.

Exhibit No.	Document Title/Description	Date	Beginning Bates No.	Ending Bates No.
PX3190	The RealReal Spreadsheet: Data		TRR-TAP-000001	TRR-TAP-000001

III. The Nature of the Information for Which *In Camera* Status is Requested

TRR was served with subpoenas from Tapestry, Inc. (“Tapestry”) and the Federal Trade Commission (“FTC”) in the matter of *Federal Trade Commission v. Tapestry, Inc., et al.*, No. 1:24-cv-03109-JLR (S.D.N.Y. 2024) (the “Civil Action”) on May 15, and May 16, 2024, respectively. In response to those subpoenas, TRR produced to both Tapestry and the FTC the Confidential Document, which consists of an Excel spreadsheet containing over one million rows of data concerning every single handbag sold by TRR for under \$10,000 from January 1, 2019 to July 10, 2024. Specifically, the spreadsheet contains the following information on a per-unit basis: sales price, discount (if any), gross sales, commission paid to consignor, total “take” by TRR, designer name, handbag name, handbag condition, and customer location by state and country.

After TRR was notified that FTC and Tapestry intended to use the Confidential Document as a potential exhibit for the evidentiary hearing on the FTC’s request for a preliminary injunction in the Civil Action, TRR filed a motion to seal the Confidential

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Document. United States District Judge Jennifer L. Rochon granted TRR's motion on September 6, 2024. *Federal Trade Commission v. Tapestry, Inc., et al.*, No. 1:24-cv-03109-JLR, Dkt. 321 (S.D.N.Y. Sept. 6, 2024).

On August 30, 2024, counsel for the FTC and Tapestry, respectively, notified TRR that they each expected to include TRR's Confidential Document as evidence at the FTC's Part 3 administrative evidentiary hearing beginning on September 25, 2024. Counsel for both parties indicated that they will not oppose TRR's motion for *in camera* treatment.

IV. TRR's Confidential Document is Secret and Material such that Public Disclosure Will Result in Serious Injury to TRR.

In camera treatment of material is appropriate when its "public disclosure will likely result in a clearly defined, serious injury to the person, partnership, or corporation requesting" such treatment. 16 C.F.R. § 3.45(b). The proponent demonstrates serious competitive injury by showing that the documents are secret and that they are material to the business. *In re General Foods Corp.*, 95 F.T.C. 352,355 (1980); *In re Dura Lube Corp.*, 1999 F.T.C. LEXIS 255, *6 (1999). Courts generally seek "to protect confidential business information from unnecessary airing." *H.P. Hood & Sons, Inc.*, 58 F.T.C. 1184, 1188 (1961).

The factors to be weighed when considering secrecy and materiality include: (1) the extent to which the information is known outside of the business; (2) the extent to which it is known by employees and others involved in the business; (3) the extent of measures taken to guard the secrecy of the information; (4) the value of the information to the business and its competitors; (5) the amount of effort or money expended in developing the information; and (6) the ease or difficulty with which the information could be acquired or duplicated by others. *In re Bristol-Myers Co.*, 90 F.T.C. 455, 456-457 (1977).

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The public interest in open proceedings does not override TRR's right to maintain the confidentiality of its proprietary business information. The authority to grant *in camera* status under Rule 3.45 recognizes that the public interest is not absolute. In *H.P. Hood*, the Commission explained:

But, as we have indicated, the Commission should protect the confidential records of persons or corporations involved in proceedings before it insofar as such protection is practicable. Is this duty in conflict with our duty to hold public hearings? We think not. The answer lies somewhere between the Scylla of indiscriminate 'in camera' rulings and the Charybdis of complete and unnecessary disclosure.

H.P. Hood, 58 F.T.C. at 1187. In *General Foods*, the Commission explained that if applicants for *in camera* treatment make the showing that "disclosure of confidential business information is likely to cause serious competitive injury, the principal countervailing consideration weighing in favor of disclosure should be the importance of the information in explaining the rationale of our decisions." 95 F.T.C. at 355. *See also In the Matter of 1-800 Contacts, Inc.*, 2017 WL 1345290, at *1 (Dkt. 9372, Apr. 4, 2017).

Here, the Confidential Document is both secret and material to TRR's business as discussed in detail in the Suko Declaration. It contains highly specific, item-level information regarding every handbag sold under \$10,000 by TRR over the past immediate six and a half years. That information is of competitive significance to TRR. Suko Declaration ¶¶ 6-7. Such comprehensive information is not public outside of TRR. *Id.* ¶¶ 7-8. In fact, within TRR, the full range of data in the Confidential Document is accessible to only a few high-level TRR employees in corporate management or TRR's internal data science team. *Id.* ¶ 7. All TRR systems and data are protected by two-factor authentication. *Id.*

TRR has previously taken measures to keep its confidential business information confidential. When TRR produced the Confidential Document in responses to the subpoenas in

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the Civil Action, it took steps to maintain confidentiality by designating the document “Highly Confidential – Attorneys’ Eyes Only” pursuant to the Protective Order in that case—not to be shared even with employees at Tapestry. Suko Decl. ¶ 11. TRR moved to seal the document to the extent that it was used during the evidentiary hearing for a preliminary injunction and that motion was granted. *Federal Trade Commission v. Tapestry, Inc., et al.*, No. 1:24-cv-03109-JLR, Dkt. 321 (S.D.N.Y. Sept. 6, 2024). Because of the highly confidential and proprietary nature of the information and its materiality to TRR’s business, *in camera* treatment is appropriate.

The release of the Confidential Document would be of great value to TRR’s competitors and suppliers, and highly detrimental to TRR’s business advantage. *Id. See In re Dura Lube Corp.*, 1999 FTC LEXIS 255 at *7 (Dec. 23, 1999) (“The likely loss of business advantages is a good example of a ‘clearly defined, serious injury.’”). The Confidential Document contains TRR’s recent and specific pricing, sales, discount, commission, and profit information for every handbag sold under \$10,000 since January 1, 2019, as well as the condition, brand, and make of each handbag and the customer’s location. Suko Decl. ¶ 6. Making such information public would result in a loss of business advantage that TRR has built as the result of its time and effort setting pricing and discount information and determining levels of commission payments. *Id.* ¶ 9. TRR has made significant investments in developing pricing algorithms, which a competitor could potentially reverse engineer if they were given access to the data in the Confidential Document. *Id.* TRR’s pricing algorithms are trade secrets. *See In the Matter of Tronox Ltd.*, 2018 WL 2336016, at *2 (Dkt. 9377, May 15, 2018) (“Examples of trade secrets meriting indefinite *in camera* treatment include secret formulas, processes, other secret technical information, or information that is privileged.”). Public disclosure would allow TRR’s competitors to more effectively target TRR’s customers and consignors by undermining TRR’s pricing, discount, and

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commission practices. Suko Decl. ¶ 9. This result would be incongruous to the FTC's mission to maintain a competitive marketplace.

If this information were to become public record, TRR would be significantly harmed in its ability to compete. Because of the highly confidential and proprietary nature of the information and its materiality to TRR's business, *in camera* treatment is appropriate. This Court has granted requests to provide *in camera* status to similar categories of information. For example, *In the Matter of Tronox Limited*, 2018 WL 2336016, at *1, 7-12 (Dkt. 9377, May 15, 2018), *in camera* treatment was granted to a non-party's "confidential pricing and quantity data" among other information. Similarly, in *Matter of McWane, Inc.*, 2012 WL 3862131, at *3-10 (Dkt. 9351, Aug. 17, 2012), this Court granted *in camera* status to a non-party's "voluminous spreadsheets containing information relating to [the non-party's] sales"; "detailed customer sales data"; and "information regarding gross sales, percentage of mark-up or profit, inventory levels, volume of sales of particular inventory items, and other financial and sales information that would be of benefit to competitors of [the non-party]." *See also The Matter of Champion Spark Plug Company*, 1982 FTC LEXIS 85 at *2 (Dkt. 9141, April 5, 1982) (stating that "there is ample support for granting *in camera* treatment for sales data of a type not normally disclosed"); *In the Matter of 1-800 Contacts, Inc.*, 2017 WL 1345290, at *7-12 (Dkt. 9372, Apr. 4, 2017) (granting *in camera* treatment to non-parties' "sales and pricing data").

V. TRR is a Non-Party.

Finally, TRR's status as a third party is relevant to the treatment of its confidential information. The FTC has held that "[t]here can be no question that the confidential records of businesses involved in Commission proceedings should be protected insofar as possible." *H.P. Hood & Sons*, 58 F.T.C. at 1186. Further, this Court has recognized that "a request for *in camera* treatment by a non-party warrants 'special solicitude.'" *In re Pom Wonderful, Inc.*, 2011 WL

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2160777 (Dkt. 9344, May 9, 2011), at *1. *See also In re Kaiser Aluminum & Chem. Corp.*, 103 FTC 500, 500 (1984) (“As a policy matter, extensions of confidential or *in camera* treatment in appropriate cases involving third party bystanders encourages cooperation with future adjudicative discovery requests.”). A public understanding of this proceeding does not depend on access to the third-party data submitted by TRR. *See In re Kaiser Aluminum & Chem. Corp.*, 103 FTC at 500. TRR’s third-party status therefore weighs in favor of granting *in camera* status to the Confidential Document.

VI. Permanent *In Camera* Treatment Is Justified.

Given the highly sensitive nature of the information contained in the Confidential Document, TRR requests that it be given permanent *in camera* treatment. TRR’s detailed item-specific data regarding pricing, discount, and commission for over one million handbags, which could be used to reverse-engineer TRR’s proprietary algorithms, is not likely to become less sensitive over time. *See In the Matter of Evanston Nw. Healthcare Corp., & Enh Med. Grp., Inc.*, 2005 WL 593177, at *1 (Dkt. 9315 Feb. 9, 2005) (indefinite *in camera* treatment is granted when “the competitive sensitivity or the proprietary value of the information will not diminish with the passage of time”). However, to the extent such permanent treatment is not given, TRR requests that the period of *in camera* treatment of the Confidential Document be no less than 10 years. *See In the Matter of Tronox Limited*, 2018 WL 2336016, at *1, 7-12 (Dkt. 9377, May 15, 2018) (granting *in camera* treatment to business records containing “confidential pricing” data for a period of 10 years); *In re E. I. DuPont de Nemours & Co.*, 1990 FTC LEXIS 134, at *5-6 (Dkt. 9108, April 25, 1990) (finding that the level of “detailed cost data” in the subject documents and “the existence of extrapolation techniques,” among other factors, justified the extension of duration of *in camera* treatment for a period of 10 years).

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VII. Conclusion

For the reasons set forth above and in the accompanying Suko Declaration, TRR respectfully requests that this Court grant *in camera* treatment for the Confidential Document in its entirety.

Dated: September 10, 2024

Respectfully Submitted,

/s/ Leigh M. Nathanson

Leigh M. Nathanson
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lnathanson@kslaw.com

Counsel for Non-Party The RealReal, Inc.

PUBLIC**STATEMENT REGARDING MEET AND CONFER**

The undersigned certifies that counsel for non-party The RealReal, Inc. (“TRR”) notified counsel for Tapestry, Inc. and the Federal Trade Commission via electronic mail on September 6, 2024 that it would be seeking *in camera* treatment of the Confidential Document. Counsel for Tapestry, Inc. and the Federal Trade Commission have indicated that they would not oppose TRR’s motion.

Dated: September 10, 2024

/s/ Leigh M. Nathanson

Leigh M. Nathanson
KING & SPALDING LLP
1185 Avenue of the Americas
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New York, NY 10036
Tel: (212) 556-2100
Fax: (212) 556-2222
lnathanson@kslaw.com

Counsel for Non-Party The RealReal, Inc.

PUBLIC**CERTIFICATE OF SERVICE**

I hereby certify that on September 10, 2024, I caused the foregoing documents to be filed electronically using the FTC's E-Filing System, which will send notification of such filing to:

April Tabor
Secretary
Federal Trade Commission
600 Pennsylvania Ave., NW, Rm. H-113
Washington, DC 20580
ElectronicFilings@ftc.gov

The Honorable Dania L. Ayoubi
Administrative Law Judge
Federal Trade Commission
600 Pennsylvania Ave., NW, Rm. H-110
Washington, DC 20580

I also certify that I caused the foregoing documents to be served via email to:

Sarah Kerman
Federal Trade Commission, Bureau of Competition
600 Pennsylvania Ave. NW
Washington, D.C. 20580
Tel: (202) 326-2506
skerman@ftc.gov
Counsel Supporting the Complaint

Mary Casale
LATHAM & WATKINS LLP
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Washington, D.C. 20004-1304
Tel: (202) 637-1008
mary.casale@lw.com
Counsel for Respondent Tapestry, Inc.

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brpollard@wlrk.com
Counsel for Respondent Capri Holdings Limited

Dated: September 10, 2024

By: /s/ Leigh M. Nathanson
Leigh M. Nathanson
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Fax: (212) 556-2222
lnathanson@kslaw.com

Counsel for Non-Party The RealReal, Inc.

PUBLIC

**UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES**

In the Matter of)	
)	
Tapestry, Inc., and)	DOCKET NO. 9429
)	
Capri Holdings Limited,)	
)	
Respondents.)	

[PROPOSED] ORDER

Upon consideration of Non-Party The RealReal, Inc.’s (“TRR’s”) Consent Motion for *In Camera* Treatment and 16 C.F.R. § 3.45, it is HEREBY ORDERED that the following documents in their entirety are to be provided *in camera* treatment permanently or for a period of ten years from the date of this order.

Exhibit No.	Document Title/Description	Date	Beginning Bates No.	Ending Bates No.
PX3190	The RealReal Spreadsheet: Data		TRR-TAP-000001	TRR-TAP-000001

ORDERED:

The Honorable Dania L. Ayoubi
Administrative Law Judge

Dated: _____

EXHIBIT A



UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

Bureau of Competition
Mergers II Division

August 29, 2024

VIA EMAIL TRANSMISSION

The RealReal, Inc. C/O
Leigh M. Nathanson
King & Spalding
1185 Avenue of the Americas
34th Floor
New York, NY 10036
LNathanson@kslaw.com

RE: *In the Matter of Tapestry, Inc. and Capri Holdings Limited*, Docket No. 9429

Dear Leigh M. Nathanson:

By this letter we are providing formal notice, pursuant to Rule 3.45(b) of the Commission’s Rules of Practice, 16 C.F.R. § 3.45(b), that Complaint Counsel intends to offer the documents and testimony referenced in the enclosed Attachment A into evidence in the administrative trial in the above-captioned matter. Please let me know if you need copies of the documents and testimony referenced in Attachment A.

The administrative trial is scheduled to begin on September 25, 2024. All exhibits admitted into evidence become part of the public record unless Administrative Law Judge Dania L. Ayoubi grants *in camera* status (i.e., non-public/confidential).

For documents or testimony that include sensitive or confidential information that you do not want on the public record, you must file a motion seeking *in camera* status or other confidentiality protections pursuant to 16 C.F.R §§ 3.45 and 4.10(g). Judge Ayoubi may order materials, whether admitted or rejected as evidence, be placed *in camera* only after finding that their public disclosure will likely result in a clearly-defined, serious injury to the person, partnership, or corporation requesting *in camera* treatment.

Motions for *in camera* treatment for evidence to be introduced at trial must meet the strict standards set forth in 16 C.F.R. § 3.45 and explained in *In re 1-800 Contacts, Inc.*, 2017 FTC LEXIS 55 (April 4, 2017); *In re Jerk, LLC*, 2015 FTC LEXIS 39 (Feb. 23, 2015); *In re Basic Research, Inc.*, 2006 FTC LEXIS 14 (Jan. 25, 2006). Motions also must be supported by a declaration or affidavit by a person qualified to explain the confidential nature of the material. *In re 1-800 Contacts, Inc.*, 2017 FTC LEXIS 55 (April 4, 2017); *In re North Texas Specialty Physicians*, 2004 FTC LEXIS 66 (Apr. 23, 2004). For your convenience, we included, as links in the cover email, an example of a third-party motion (and the accompanying declaration or affidavit) for *in camera* treatment that was filed and granted in an FTC administrative proceeding. If you choose to move for *in camera* treatment, you must provide a copy of the

document(s) for which you seek such treatment to the Administrative Law Judge. Also, you or your representative will need to file a Notice of Appearance in the administrative proceeding. For more information regarding filing documents in adjudicative proceedings, please see <https://www.ftc.gov/about-ftc/bureaus-offices/office-secretary/document-filing>.

Please be aware that under the current Scheduling Order **the deadline for filing motions seeking *in camera* treatment is September 10, 2024**. A copy of the May 16, 2024 Scheduling Order can be found at [Tapestry/Capri](#). If you have any questions, please feel free to contact me at (202) 326-2506 or skerman@ftc.gov.

Sincerely,

/s/ Sarah Kerman
Sarah Kerman
Counsel Supporting the Complaint

Attachment

EXHIBIT A

D09429

**ATTACHMENT A
CONFIDENTIALITY NOTICE**

Ex No.	Description	Date	Bates-Begin	Bates-End
PX3190	The RealReal Spreadsheet: Data		TRR-TAP-000001	TRR-TAP-000001

EXHIBIT B

From: Mary.Casale@lw.com
To: [Julianne Duran](#); [Leigh Nathanson](#)
Cc: Daniel.Reid@lw.com; Ivy.Ziedrich@lw.com
Subject: FTC v. Tapestry, Inc. - Part 3 Exhibit List
Date: Friday, August 30, 2024 5:50:33 PM
Attachments: [2024.04.25 - Protective Order Governing Confidential Material.pdf](#)
[2024.05.16 - Scheduling Order.pdf](#)

CAUTION: MAIL FROM OUTSIDE THE FIRM

Leigh and Julianne,

Pursuant to the Scheduling Order and Protective Order *In the Matter of Tapestry Inc., and Capri Holdings Ltd.*, Dkt No. 9439 (attached for reference) and 16 C.F.R. § 3.45(b), we are providing notice that we intend to offer materials or testimony provided by The RealReal (the “third party”) as evidence at the FTC’s Part 3 administrative evidentiary hearing beginning on September 25, 2024 in Washington, DC. Accordingly, pursuant to the Scheduling Order in this matter, if a third party wishes *in camera* treatment for a document or transcript that a party intends to introduce into evidence, that third party shall file an appropriate motion with the Administrative Law Judge within ten (10) days after it receives notice of a party’s intent to introduce such material. Respondents will not oppose any proposed *in camera* treatment. The materials and/or testimony included are:

- TRR-TAP-000001 – The RealReal Sales Data

Regards,

Mary A. Casale

LATHAM & WATKINS LLP
555 Eleventh Street, NW
Suite 1000
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Direct Dial: +1.202.637.1008
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EXHIBIT C

EXHIBIT C

PUBLIC

**UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES**

In the Matter of)	
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Respondents.)	
)	

DECLARATION OF TODD SUKO IN SUPPORT OF NON-PARTY THE REALREAL, INC.’S CONSENT MOTION FOR *IN CAMERA* TREATMENT

I, Todd Suko, hereby declare as follows:

1. I am the Chief Legal Officer and Secretary of The RealReal, Inc. (“TRR”). I make this declaration in support of Non-Party The RealReal, Inc.’s Consent Motion for *In Camera Treatment* (the “Motion”). I have personal knowledge of the matters stated herein and, if called upon to do so, could competently testify about them.

2. I have reviewed and am familiar with the document TRR produced in the matter of *Federal Trade Commission v. Tapestry, Inc., et al.*, No. 1:24-cv-03109-JLR (S.D.N.Y. 2024) in response to subpoenas from Tapestry, Inc. (“Tapestry”) and the Federal Trade Commission (“FTC”). Given my position at TRR, I am familiar with the type of information contained in the document at issue and its competitive significance to TRR. Based on my review of the document, my knowledge of TRR’s business, and my familiarity with the confidentiality protection afforded this type of information by TRR, I submit that the disclosure of this document to the public and to competitors of TRR would cause serious competitive injury to TRR.

3. TRR began in 2011 as a start-up company and is now the world’s largest and most trusted resource for authenticated luxury resale. TRR is a leader in the market for luxury

EXHIBIT C**PUBLIC**

consignment, providing a safe, secure, and reliable platform for the resale of high-end clothing, handbags, fine jewelry and watches, art, and home items. TRR's mission is to enable more people to own and appreciate luxury while maximizing the value of their investments.

4. TRR has multiple physical locations across the United States, including in New York, Greenwich, Chicago, Dallas, Los Angeles, Palo Alto, Marin, Palm Beach, Newport Beach, and San Francisco. TRR provides both an online and a brick-and-mortar platform where consumers-turned consignors can sell and buy secondhand luxury items from hundreds of brands. TRR does not produce or manufacture the products it sells; rather, it functions as a marketplace and service for consumers to consign and resell their secondhand luxury items.

5. Counsel for Tapestry and the FTC have informed TRR that they intend to use the documents that TRR produced in response to the subpoenas as evidence at the administrative hearing in this matter. TRR's document production contains sensitive and confidential business information. As described in the motion, TRR seeks permanent *in camera* protection of the following document:

Exhibit No.	Document Title/Description	Date	Beginning Bates No.	Ending Bates No.
PX3190	The RealReal Spreadsheet: Data		TRR-TAP-000001	TRR-TAP-000001

6. The document at issue consists of an Excel spreadsheet containing over one million rows of data concerning every single handbag sold by TRR for under \$10,000 from January 1, 2019 to July 10, 2024. Specifically, the spreadsheet contains the following information on a per-unit basis: price, discount (if any), gross sales, commission paid to consignor, total "take" by TRR, designer name, handbag name, handbag condition, and customer location by state and country.

EXHIBIT C**PUBLIC**

7. TRR keeps this detailed level of information in strict confidence, as it is of competitive significance to TRR. Internally, only relatively few employees have access to the full set of information in TRR's production. Those employees are primarily higher-level employees in corporate management and members of TRR's internal data science team. All TRR systems and data are protected by two-factor authentication.

8. TRR does not make this information at this level of specificity available to its competitors or customers, and TRR does not share this information with non-TRR personnel in the ordinary course of business. Only individual consignors can view the list and/or sale price for the items they have consigned, the discount applied (if any), and the commission they earned. That data is not publicly available in the aggregate or in any other form. And while product descriptions including condition are made available in listings on TRR's website, such information is not publicly available in aggregate. Individual listings of sold items, including the sale price for those items, remain on the website for a short period of time; TRR employs an anti-bot technology that prevents competitors from scraping this data to attempt to create an approximation of the data that TRR produced.

9. Disclosure of this data set as a whole would be extremely damaging to TRR's business and a gold mine for TRR's competitors. It would give competitors valuable insight into how TRR prices items. TRR has devoted significant resources to developing its pricing methodologies, setting prices and discount levels, and determining appropriate levels of commission to be paid to consignors. TRR has made especially significant investments in developing pricing algorithms, which rely on the vast amount of sales data TRR has collected. Accurate pricing allows TRR to "make the market" for secondhand luxury items, which is a key competitive advantage. If a competitor were to gain access to this comprehensive data set, they

EXHIBIT C

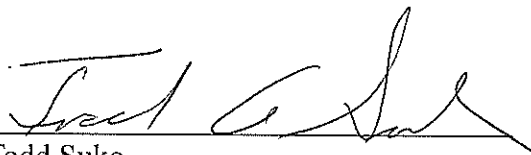
PUBLIC

could potentially reverse engineer TRR's pricing algorithms. Public disclosure would also allow TRR's competitors to more effectively target TRR's customers and consignors by undercutting TRR's pricing, discount, and commission practices.

10. In sum, the release of the information in TRR's spreadsheet would be of great value to TRR's competitors and suppliers, and highly detrimental to TRR's business advantage.

11. When TRR produced the document at issue in response to the subpoenas in the civil action, I directed outside counsel to ensure that the document's confidentiality was maintained. Specifically, I made sure that the document was designated "Highly Confidential – Attorneys' Eyes Only" pursuant to the Protective Order in the case. I did not want the document to be shared even with employees at Tapestry. I also directed outside counsel to move to seal the document in the Southern District of New York. That motion, which was filed on August 30, 2024, was granted on September 6, 2024.

12. I declare under penalty of perjury that the foregoing is true and correct. Executed September 10, 2024 at San Francisco, California.



Todd Suko

EXHIBIT D

NON-PUBLIC FILING