Risk Factors Comparison 2024-03-01 to 2023-02-28 Form: 10-K

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The following is a summary of the principal risks and uncertainties described in more detail in this 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** ~~Our reduction in workforce and the associated real estate reduction~~ 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 ~~unable~~ -- **able** to ~~sustain our~~ **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. • Public health emergencies or outbreaks of epidemics, pandemics, or contagious diseases such as the COVID- 19 pandemic have adversely affected, and could in the future, adversely affect our business and the business of our consignors and buyers. **• The failure of any bank in which we deposit our funds could reduce the amount of cash we have available to pay distributions and make additional investments.** Risks Relating to Our Strategy • We may be unable to execute on our retail strategy. • Expansion of our operations internationally will require significant management attention and resources. **• Our growth strategies may not be successfully implemented, help us achieve profitability or generate sustainable revenue and profit.** Risks Relating to Supply • We may not be able to obtain sufficient new and recurring supply of pre- owned luxury goods. • We may be unable to attract and retain talented sales professionals. • Our growth and supply of product offerings are enhanced **by** our ability to maintain our brand partnerships. Risks Relating to Demand • Our continued growth depends on attracting new and retaining repeat buyers. • National retailers and brands set their own retail prices and promotional discounts on new luxury goods, which could adversely affect our value proposition to consignors and buyers. • We must successfully gauge and respond to changing preferences among our consignors and buyers. • We may be unable to replicate our business model for newer categories of consigned goods or different product mixes of consigned goods. • We rely on consumer discretionary spending, which is adversely affected by economic downturns, including economic recession or depression, and other macroeconomic conditions or trends. • Our industry is highly competitive and we may not be able to compete effectively. Risks Related to Marketing and Brand Management • Our success depends on the accuracy and reliability of our authentication process. • We may not succeed in promoting and sustaining our brand. • Our **marketing and** advertising activity may fail to efficiently drive growth in consignors and buyers. • We rely on third parties to drive traffic to our website. • Use of social media, emails and text messages may adversely impact our reputation or subject us to fines. • The public disclosure of our Environmental, Social and Governance (~~"~~ **“** ESG ~~"~~ **”**) metrics may subject us to risks. Risks Related to Our Merchandising and Fulfillment • We may not be able to attract, train and retain specialized personnel and skilled employees. • We may not be able to identify and lease authentication centers in suitable geographic regions. • We may experience damage or destruction to our authentication centers or retail stores in which we store of the majority of the consigned luxury goods we offer through our online marketplace. • Shipping is a critical part of our business and any changes in our shipping arrangements, costs, interruptions in shipping or damage to products in transit could adversely affect our operating results. • We may be unable to successfully leverage technology to automate and drive efficiencies in our operations. Risks Related to Data Security, Privacy and Fraud • We rely on third parties to host our website and mobile app and to process payments. • Failure of our data security could cause us to incur unexpected expenses or compromise our data assets. • We may incur significant losses from fraud. Risks Related to Our Employees • We may be unable to attract and retain key personnel or effectively manage leadership succession. • Labor- related matters, including labor disputes, may adversely affect our operations. Risks Related to Our Intellectual Property • If we cannot successfully protect our intellectual property, our business could suffer. Risks Relating to Litigation and Regulatory Uncertainty • We are currently, and may be in the future, party to lawsuits and other claims. • Our use and other processing of personal information and other data is subject to laws and obligations relating to privacy and data protection. • We pay or collect sales taxes in all jurisdictions which require such taxes. • Failure to comply with applicable laws or regulations may subject us to fines, penalties, loss of licensure, registration, facility closures or other governmental enforcement action. • Application of existing tax laws, rules or regulations are subject to interpretation by taxing authorities. • 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 • We have incurred a significant amount of debt and may incur additional indebtedness in the future. • Transactions relating to our Notes may dilute the ownership interest of our stockholders. • The conversion of the Notes, if triggered, may adversely affect our financial condition and operating results. • The accounting method for the Notes materially affects our reported financial results. • The capped call transactions may affect the value of the Notes and our common stock. 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 Annual Report on Form 10- K and in our other filings with the Securities and Exchange Commission (**"** SEC **"**). The risks described below are not the only ones we face. The occurrence of any of the following risks or additional risks and uncertainties not presently known to us or that we currently believe to be immaterial could materially and adversely affect our business, financial condition or results of operations. We have a history of losses and we may not achieve or maintain profitability in the future. We experienced net losses of $ ~~175. 8 million, $~~ 236. 1 million, ~~and~~ $ 196. 4 million **and $ 168. 5 million** in ~~2020,~~ 2021 ~~and~~ **,** 2022 **and 2023** , respectively, and as of December 31, ~~2022~~ **2023** we had an accumulated deficit of $ ~~951~~ **1, 119** . ~~2~~ **6** million. Our key initiatives currently include **growing profitable supply** ~~updating our consignor commission structure~~ , improving ~~efficiency~~ **efficiencies** ~~and cutting costs~~ , ~~optimizing product pricing,~~ and **pursuing** ~~capitalizing on potential~~ 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. In February 2023, we ~~announced~~ **implemented** a reduction in workforce ~~by~~ **of** approximately 7 % and a reduction in our real estate presence to reduce our operating expenses. ~~We estimate that we will incur non- recurring charges of approximately $ 1. 7 to $ 2. 2 million in connection with the reduction in workforce, primarily consisting of severance payments, employee benefits contributions and related costs. The estimates of the charges and expenditures that we expect to incur in connection with the reduction in workforce, and timing thereof, are subject to a number of assumptions, including local law requirements in various jurisdictions, and we may incur costs that are greater than we currently expect in connection with the reduction in workforce. The Company also expects to incur charges related to its decision to exit and sublease or cease use of certain facilities under its plan to reduce its real estate presence, which charges cannot reasonably be estimated at this time.~~ See " ~~Part IV,~~ Note ~~15~~ **11** – **Restructuring** ~~Subsequent Events~~ " for **further details** ~~a description of these recent changes~~ . 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 ~~also~~ cannot guarantee that we will not have to undertake additional workforce or real estate reductions in the future. Furthermore, ~~these changes may be disruptive to our operations. For example, our workforce reductions could yield unanticipated consequences, such as attrition beyond planned staff reductions, the loss of institutional knowledge or expertise, increased difficulties in our day- to- day operations, greater- than- anticipated costs incurred in connection with implementing the workforce reductions and real estate reduction plan and reduced employee morale. These changes could place substantial demands on our management and employees, which could lead to the diversion of our management' s and employees' attention from other business priorities. Our workforce reductions could also harm our ability to attract and retain qualified management and personnel who are critical to our business. Our business, financial condition and results of operations could be materially and adversely affected by any failure to attract or retain qualified personnel. In addition, while certain positions have been eliminated in connection workforce reduction, certain functions necessary to our reduced operations remain, and~~ we ~~may be unsuccessful in distributing the duties and obligations of departed employees among our remaining employees or to external service providers, which could result in disruptions to our operations. 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 ~~sustain our~~ **return to historic levels of** revenue growth rate or effectively manage growth or new opportunities. **Our past** ~~While we experienced negative revenue growth in 2020, our revenue grew in 2019, 2021, and 2022. Such recent~~ revenue growth should not be considered indicative of ~~our~~ 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. ~~Our relatively short operating history and the changes~~ **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** ~~Aside from the negative impact the COVID- 19 pandemic has had and may continue to have on our revenues, as~~ we grow our business, our ~~future~~ revenue growth rates may ~~slow~~ **continue to decline in future periods** due to a number of factors, including ~~the maturation of~~ our ~~business~~ **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** 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 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. 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 ~~margin~~ **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. 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. 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. Any debt financing secured by us could involve 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. 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 ~~global economy, our markets and our business have been, and may continue to be, materially and adversely affected by COVID- 19. Though availability of vaccines and reopening of state and local economies has improved the outlook for recovery from COVID- 19' s impacts, and recently, there has been a return to more normal societal interactions, the impact of new, more contagious or lethal variants that emerge, and the effectiveness of COVID- 19 vaccines against variants and the related responses by governments, including reinstated government- imposed lockdowns or other measures, cannot be predicted at this time. 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 ~~heightened as a~~ **exacerbated by an epidemic, pandemic or similar serious public health issue. 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 ~~of~~ **in a decline in** the ~~impacts~~ **value** of **our stockholders' investment** ~~the COVID- 19 pandemic~~ . **We may be unable to execute** ~~At this time, we cannot reasonably estimate the full extent of impact of the COVID- 19 pandemic~~ on our **retail growth strategy** ~~business, operations and financial results~~ . 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 ~~recently~~ 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. 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, 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** . 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, ~~and~~ 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 ~~. The effectiveness of this program is still uncertain~~ . 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 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 ~~such as Stella McCartney~~ , ~~Jimmy Choo, Nanushka, 11Honore~~ and **may** ~~Beckett Collectibles, and~~ 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. 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 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 ~~the COVID- 19 pandemic,~~ 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. 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. 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** ~~authenticating~~ - **authentication** ~~goods~~ **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. 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. 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 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 ~~we will identify~~ every counterfeit item ~~that is~~ 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 ~~operations~~ **processes and methods** could cause buyers and consignors to lose confidence in our platform and adversely affect our revenue. 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 future growth and profitability depend in large part upon the effectiveness and efficiency of our ~~advertising~~ **marketing** , promotion, public relations and ~~marketing~~ **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** ~~continue driving our profitable~~ 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 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. 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. 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. ~~Any~~ **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. 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 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 ~~the~~ **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 ~~and~~ **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** ~~materially~~ -- **material** ~~adversely~~ -- **adverse** impact **on** our business and 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 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** . 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 ~~, members~~ 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 ~~service~~ **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 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 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. 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** ~~materially~~ -- **material** ~~adversely~~ -- **adverse** ~~affect~~ **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 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. 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 ~~in response to the COVID- 19 pandemic~~ may not be successful ~~in preventing the spread of the virus among our employees~~ 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. 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 ~~new~~ disclosures to California consumers and afford such consumers qualified ~~new~~

privacy rights, such as rights of access, deletion and to opt- out of the sales of their personal information. **The** ~~In 2023, the~~ CCPA was amended by the California Privacy Rights Act (the " CPRA ") ~~to~~ **, which went into effect on January 1, 2023. The CCPA, as amended,** ~~remove~~ **removes** the exclusion of employment data from its auspices ~~and~~ **,** ~~add~~ **adds** ~~restrictions on non~~ **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** ~~sale sharing of data. Additional rule making and clarification activity by the California Attorney General~~ ' s ~~office~~ **obligations to secure contractual obligations from service providers** and ~~the~~ **third parties, and expands business' s obligations with respect to opt- out preference signals. The** new California Privacy Protection Agency **completed** ~~is~~ **its** ~~ongoing with final results expected~~ **first round of rule making but has left many new requirements, such as data privacy and security risk assessments and the right** to ~~be released later~~ **opt out of certain data profiling activities, for its second round of rule making, which began** in **March** 2023. It remains unclear ~~what, if any, modifications will be made to the CCPA or~~ how ~~it~~ **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. ~~We~~ **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. 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 ~~recently~~ 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 ~~materially~~ -- **material** adverse impact on our business and operating results. 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.

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. 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 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 ~~, such as the current COVID- 19 pandemic and the war in Ukraine~~ . 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 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. 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 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. In June 2020, we issued $ 172. 5 million in aggregate principal amount of 3. 00 % Convertible Senior Notes due 2025 ~~(the" 2025 Notes")~~, and in March 2021, we issued $ 287. 5 million in aggregate principal amount of 1. 00 % Convertible Senior Notes due 2028 ~~(the" 2028 Notes" and, together with the 2025 Notes, the" Notes")~~, each issuance in an offering exempt from registration. 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 conversion of some or all of our outstanding Notes would dilute the ownership interests of existing stockholders to the extent we deliver shares upon conversion of any such Notes. If the Notes become convertible under the terms of the indenture, and if holders subsequently elect to convert the Notes, 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 could adversely affect prevailing market prices for our common stock. In addition, the existence of the Notes may encourage short selling by market participants because the conversion of the Notes could be used to satisfy short positions. In the event the conditional conversion feature of the Notes is triggered, holders of the Notes will be entitled to convert their Notes at any time during specified periods at their option. If one or more holders elect to convert their 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 Notes do not elect to convert their Notes, we could be required under applicable accounting rules to reclassify all or a portion of the outstanding principal of the Notes as a current rather than long- term liability, which could result in a material reduction in our net working capital. 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 Notes separately because the 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 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 Notes. However, we adopted ASU 2020- 06 as of January 1, 2022, under which we now account for the 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 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 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 Notes, could adversely affect our financial results, the trading price of our common stock and the trading price of the Notes. In connection with the pricing of the 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 Notes. The capped call transactions are expected to offset the potential dilution to our common stock upon any conversion of the 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 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 Notes or otherwise. This activity could also cause or avoid an increase or a decrease in the market price of our common stock.