

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**
Washington, D.C. 20549

FORM S-8
REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933

The RealReal, Inc.
(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

55 Francisco Street, Suite 600
San Francisco, California
(Address of Principal Executive Offices)

45-1234222
(I.R.S. Employer
Identification No.)

94133
(Zip Code)

THE REALREAL, INC. 2011 EQUITY INCENTIVE PLAN
THE REALREAL, INC. 2019 EQUITY INCENTIVE PLAN
THE REALREAL, INC. EMPLOYEE STOCK PURCHASE PLAN
(Full title of the plan)

Dana DuFrane
General Counsel
55 Francisco Street
Suite 600
San Francisco, CA 94133
(855) 435-5893
(Name, address, including zip code, and telephone number, including area code, of agent for service)

Copies To:

Hank V. Barry
Sidley Austin LLP
1001 Page Mill Road
Building 1
Palo Alto, CA 94304
(650) 565-7000

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

Large accelerated filer Accelerated filer
Non-accelerated filer Smaller reporting company
Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 7(a)(2)(B) of the Securities Act.

CALCULATION OF REGISTRATION FEE

Title of securities to be registered	Amount to be registered (1)	Proposed maximum offering price per share (2)	Proposed maximum aggregate offering price (2)	Amount of registration fee (2)
Common Stock, par value \$0.00001 per share	8,042,637 ⁽³⁾	\$27.32 ⁽⁴⁾	\$219,716,948	\$26,629.70
Common Stock, par value \$0.00001 per share	1,750,000 ⁽⁵⁾	\$27.32 ⁽⁴⁾	\$47,810,000	\$5,794.58
Common Stock, par value \$0.00001 per share	9,609,310 ⁽⁶⁾	\$4.24 ⁽⁷⁾	\$40,743,475	\$4,938.11

- (1) The RealReal, Inc. (the “Registrant”) is registering an aggregate of 8,042,637 shares of common stock, par value \$0.00001 per share (the “Common Stock”), that may be issued under The RealReal, Inc. 2019 Equity Incentive Plan, 1,750,000 shares of Common Stock that may be issued under The RealReal, Inc. Employee Stock Purchase Plan and 9,609,310 shares of Common Stock that may be issued pursuant to the exercise of outstanding stock options under The RealReal, Inc. 2011 Equity Incentive Plan. Pursuant to Rule 416 of the Securities Act of 1933, as amended (the “Securities Act”), this Registration Statement also covers such additional and indeterminate number of securities as may become issuable pursuant to the provisions of the plans relating to adjustments for changes resulting from a share dividend, share split or similar change.
- (2) Estimated pursuant to Rule 457(h) under the Securities Act solely for the purpose of calculating the registration fee.
- (3) Represents shares of Common Stock that may be issued under The RealReal, Inc. 2019 Equity Incentive Plan.
- (4) Estimated pursuant to Rule 457(h) under the Securities Act solely for the purpose of calculating the registration fee. The price of \$27.32 per share represents the average high and low sales prices of the Common Stock as quoted on the Nasdaq Global Select Market on July 1, 2019.
- (5) Represents shares of Common Stock that may be issued under The RealReal, Inc. Employee Stock Purchase Plan.
- (6) Represents shares of Common Stock that may be issued pursuant to the exercise of outstanding stock options under The RealReal, Inc. 2011 Equity Incentive Plan.
- (7) Estimated pursuant to Rule 457(h) under the Securities Act solely for the purpose of calculating the registration fee. The price of \$4.24 per share represents the weighted average exercise price per share of outstanding stock option awards under The RealReal, Inc. 2011 Equity Incentive Plan as of July 1, 2019.

The Registration Statement shall become effective upon filing in accordance with Rule 462(a) under the Securities Act.

PART I

INFORMATION REQUIRED IN THE SECTION 10(a) PROSPECTUS

All information required by Part I to be contained in the prospectus is omitted from this Registration Statement in accordance with the explanatory note to Part I of Form S-8 and Rule 428 under the Securities Act of 1933, as amended (the "Securities Act"). This Registration Statement on Form S-8 is filed by The RealReal, Inc. (the "Registrant") regarding The RealReal, Inc. 2019 Equity Incentive Plan, The RealReal, Inc. Employee Stock Purchase Plan and The RealReal, Inc. 2011 Equity Incentive Plan. Documents containing the information required by Part I of the Registration Statement will be sent or given to plan participants as specified by Rule 428(b)(1) of the Securities Act.

PART II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 3. Incorporation of Documents by Reference.

The Registrant hereby incorporates by reference in this Registration Statement the following documents and information previously filed with the Securities and Exchange Commission (the "Commission"):

- (1) The Registrant's [prospectus](#) contained in the Registrant's Registration Statement on Form S-1, as amended (No. 333-231891); and
- (2) The description of the Registrant's Common Stock contained in the Registrant's Registration Statement on [Form 8-A](#) filed with the Commission on June 21, 2019, including any amendment or report filed for the purpose of updating such description.

All documents subsequently filed by the Registrant pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), after the date of this Registration Statement and prior to the filing of a post-effective amendment to this Registration Statement which indicates that all securities offered hereby have been sold or which deregisters all securities then remaining unsold, shall be deemed to be incorporated by reference herein and to be a part hereof from the respective dates of filing of such documents (such documents, and the documents enumerated above, being hereinafter referred to as "Incorporated Documents").

Any statement contained in an Incorporated Document shall be deemed to be modified or superseded for purposes of this Registration Statement to the extent that a statement contained herein or in any other subsequently filed Incorporated Document modifies or supersedes such statement. Any such statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part of this Registration Statement.

Item 4. Description of Securities.

Not applicable.

Item 5. Interests of Named Experts and Counsel.

Not applicable.

Item 6. Indemnification of Directors and Officers.

The Registrant is incorporated under the laws of the State of Delaware. Reference is made to Section 102(b)(7) of the General Corporation Law of the State of Delaware, as amended (the "DGCL"), which enables a corporation in its original certificate of incorporation or an amendment thereto to eliminate or limit the personal liability of a director for violations of the director's fiduciary duty, except (1) for any breach of the director's duty of loyalty to the corporation or its stockholders, (2) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (3) pursuant to Section 174 of the DGCL, which provides for liability of directors for unlawful payments of dividends or unlawful stock purchase or redemptions or (4) for any transaction from which the director derived an improper personal benefit.

Section 145(a) of the DGCL provides, in general, that a corporation may indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the corporation), because he or she is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by the person in connection with such action, suit or proceeding, if he or she acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the corporation and, with respect to any criminal action or proceeding, had no reasonable cause to believe his or her conduct was unlawful.

Section 145(b) of the DGCL provides, in general, that a corporation may indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the corporation to procure a judgment in its favor because the person is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees) actually and reasonably incurred by the person in connection with the defense or settlement of such action or suit if he or she acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the corporation, except that no indemnification shall be made with respect to any claim, issue or matter as to which he or she shall have been adjudged to be liable to the corporation unless and only to the extent that the adjudicating court determines that, despite the adjudication of liability but in view of all of the circumstances of the case, he or she is fairly and reasonably entitled to indemnity for such expenses which the adjudicating court shall deem proper.

Section 145(g) of the DGCL provides, in general, that a corporation may purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against such person and incurred by such person in any such capacity, or arising out of his or her status as such, whether or not the corporation would have the power to indemnify the person against such liability under Section 145 of the DGCL.

The Registrant's certificate of incorporation provides that no director of the Registrant shall be personally liable to the Registrant or its stockholders for monetary damages for any breach of fiduciary duty as a director, except for liability (1) for any breach of the director's duty of loyalty to the Registrant or its stockholders, (2) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (3) in respect of unlawful dividend payments or stock redemptions or repurchases or other distributions pursuant to Section 174 of the DGCL, or (4) for any transaction from which the director derived an improper personal benefit. In addition, the Registrant's charter provides that if the DGCL is amended to authorize the further elimination or limitation of the liability of directors, then the liability of a director of the Registrant shall be eliminated or limited to the fullest extent permitted by the DGCL, as so amended.

The Registrant's charter further provides that any amendment, repeal or modification of such article unless otherwise required by law will not adversely affect any right or protection existing at the time of such repeal or modification with respect to any acts or omissions occurring before such repeal or amendment of a director serving at the time of such repeal or modification.

The Registrant's certificate of incorporation provides that the Registrant shall indemnify each of its directors and executive officers, and shall have power to indemnify its other officers, employees and agents, to the fullest extent permitted by the DGCL as the same may be amended (except that in the case of an amendment, only to the extent that the amendment permits the Registrant to provide broader indemnification rights than the DGCL permitted the Registrant to provide prior to such the amendment) against any and all expenses, judgments, penalties, fines and amounts reasonably paid in settlement that are incurred by the director, officer or such employee or on the director's, officer's or employee's behalf in connection with any threatened, pending or completed proceeding or any claim, issue or matter therein, to which he or she is or is threatened to be made a party because he or she is or was serving as a director, officer or employee of the Registrant, or at the Registrant's request as a director, partner, trustee, officer, employee or agent of another corporation, partnership, joint venture, trust, employee benefit plan or other enterprise, if he or she acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the Registrant and, with respect to any criminal proceeding, had no reasonable cause to believe his or her conduct was unlawful. The certificate of incorporation further provides for the advancement of expenses to each of the Registrant's directors and, in the discretion of the board of directors, to certain officers and employees, in advance of the final disposition of such action, suit or proceeding only upon receipt of an undertaking by such person to repay all amounts advanced if it shall ultimately be determined by final judicial decision from which there is no further right to appeal that such person is not entitled to be indemnified for such expenses.

In addition, the certificate of incorporation provides that the right of each of the Registrant's directors and officers to indemnification and advancement of expenses shall not be exclusive of any other right now possessed or hereafter acquired under any statute, provision of the charter or bylaws, agreement, vote of stockholders or otherwise. Furthermore, the Registrant's certificate of incorporation authorizes the Registrant to provide insurance for its directors, officers, employees and agents against any liability, whether or not the Registrant would have the power to indemnify such person against such liability under the DGCL or the bylaws.

The Registrant has entered into indemnification agreements with each of its directors and executive officers. These agreements provide that the Registrant will indemnify each of its directors and such officers to the fullest extent permitted by law and the Registrant's certificate of incorporation.

The Registrant also maintain a general liability insurance policy which covers certain liabilities of directors and officers of the Registrant arising out of claims based on acts or omissions in their capacities as directors or officers.

Item 7. Exemption from Registration Claimed.

Not applicable.

Item 8. Exhibits.

<u>Exhibit No.</u>	<u>Description</u>
4.1	Form of Amended and Restated Certificate of Incorporation of the Registrant (incorporated by reference to Exhibit 3.2 of Amendment No. 2 to the Registrant's Registration Statement on Form S-1/A (No. 333-231891), filed with the Commission on June 17, 2019).
4.2	Form of Amended and Restated Bylaws of the Registrant (incorporated by reference to Exhibit 3.4 of Amendment No. 1 to the Registrant's Registration Statement on Form S-1/A (No. 333-231891), filed with the Commission on June 6, 2019).
4.3	The RealReal, Inc. 2011 Equity Incentive Plan (incorporated by reference to Exhibit 10.1 of the Registrant's Registration Statement on Form S-1 (No. 333-231891), filed with the Commission on May 31, 2019).
4.4	The RealReal, Inc. 2019 Equity Incentive Plan (incorporated by reference to Exhibit 10.21 of Amendment No. 2 to the Registrant's Registration Statement on Form S-1/A (No. 333-231891), filed with the Commission on June 17, 2019).
4.5	The RealReal, Inc. Employee Stock Purchase Plan (incorporated by reference to Exhibit 10.22 of Amendment No. 2 to the Registrant's Registration Statement on Form S-1/A (No. 333-231891), filed with the Commission on June 17, 2019).
4.6	Form of Common Stock Certificate (incorporated by reference to Exhibit 4.1 of Amendment No. 2 to the Registrant's Registration Statement on Form S-1/A (No. 333-231891), filed with the Commission on June 17, 2019).
*5.1	Opinion of Sidley Austin LLP with respect to validity of issuance of securities.
*23.1	Consent of Sidley Austin LLP (included as part of Exhibit 5.1 hereto).
*23.2	Consent of KPMG LLP, independent registered public accounting firm.
*24.1	Power of Attorney (set forth on the signature page of this Registration Statement).

* Filed herewith.

Item 9. Undertakings.

(a) The Registrant hereby undertakes:

- (1) To file, during any period in which offers or sales are being made, a post-effective amendment to this Registration Statement:

(i) To include any prospectus required by Section 10(a)(3) of the Securities Act;

(ii) To reflect in the prospectus any facts or events arising after the effective date of the Registration Statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the Registration Statement; and

(iii) To include any material information with respect to the plan of distribution not previously disclosed in the Registration Statement or any material change to such information in the Registration Statement;

provided, however, that paragraphs (a)(1)(i) and (a)(1)(ii) do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in reports filed with or furnished to the Commission by the Registrant pursuant to Section 13 or Section 15(d) of the Exchange Act that are incorporated by reference in the Registration Statement.

(2) That, for the purpose of determining any liability under the Securities Act, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof.

(3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

(b) The Registrant hereby undertakes that, for purposes of determining any liability under the Securities Act, each filing of the Registrant's annual report pursuant to Section 13(a) or Section 15(d) of the Exchange Act (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Exchange Act) that is incorporated by reference in the Registration Statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof.

(c) Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers and controlling persons of the Registrant pursuant to the foregoing provisions, or otherwise, the Registrant has been advised that in the opinion of the Commission such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the Registrant of expenses incurred or paid by a director, officer or controlling person of the Registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the Registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act and will be governed by the final adjudication of such issue.

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, the Registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-8 and has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of San Francisco, State of California on the 2nd day of July, 2019.

The RealReal, Inc.

By /s/ Julie Wainwright
Name Julie Wainwright
Title Chief Executive Officer

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints Julie Wainwright, Matt Gustke and Dana DuFrane and each of them, as such person's true and lawful attorneys-in-fact and agents, with full power of substitution and resubstitution, for such person and in such person's name, place and stead, in any and all capacities, to sign any and all amendments (including post-effective amendments) to this Registration Statement and to sign any registration statement for the same offering covered by the Registration Statement that is to be effective upon filing pursuant to Rule 462 promulgated under the Securities Act of 1933, and to file the same, with all exhibits thereto, and other documents in connection therewith, with the Commission, granting unto said attorneys-in-fact and agents, and each of them, full power and authority to do and perform each and every act and thing requisite and necessary to be done in connection therewith and about the premises, as fully to all intents and purposes as such person might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents, or any of them, or their or such person's substitute or substitutes, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act of 1933, this Registration Statement has been signed below by the following persons in the capacities and on the dates indicated.

<u>Signature</u>	<u>Title</u>	<u>Date</u>
<u>/s/ Julie Wainwright</u> Julie Wainwright	Chairperson and Chief Executive Officer (Principal Executive Officer)	July 2, 2019
<u>/s/ Matt Gustke</u> Matt Gustke	Chief Financial Officer (Principal Financial Officer)	July 2, 2019
<u>/s/ Steve Lo</u> Steve Lo	Vice President, Corporate Controller (Principal Accounting Officer)	July 2, 2019
<u>/s/ Chip Baird</u> Chip Baird	Director	July 2, 2019
<u>/s/ Maha Ibrahim</u> Maha Ibrahim	Director	July 2, 2019
<u>/s/ Rob Krolik</u> Rob Krolik	Director	July 2, 2019
<u>/s/ Michael Kumin</u> Michael Kumin	Director	July 2, 2019
<u>/s/ Stefan Larsson</u> Stefan Larsson	Director	July 2, 2019
<u>/s/ Niki Leondakis</u> Niki Leondakis	Director	July 2, 2019
<u>/s/ James Miller</u> James Miller	Director	July 2, 2019

SIDLEY

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AMERICA • ASIA PACIFIC • EUROPE

July 2, 2019

The RealReal, Inc.
55 Francisco Street
Suite 600
San Francisco, CA 94133

Re: 19,401,947 Shares of Common Stock, \$0.00001 par value per share

Ladies and Gentlemen:

We refer to the Registration Statement on Form S-8 (the "Registration Statement") being filed by The RealReal, Inc., a Delaware corporation (the "Company"), with the Securities and Exchange Commission under the Securities Act of 1933, as amended (the "Securities Act"), relating to the registration of an aggregate of 19,401,947 shares of Common Stock, \$0.00001 par value per share (the "Registered Shares"), of the Company which may be issued under The RealReal, Inc. 2011 Equity Incentive Plan, The RealReal, Inc. 2019 Equity Incentive Plan and The RealReal, Inc. Employee Stock Purchase Plan (collectively, the "Plans").

This opinion letter is being delivered in accordance with the requirements of Item 601(b)(5) of Regulation S-K under the Securities Act.

We have examined the Plans, the Registration Statement, the Amended and Restated Certificate of Incorporation, as currently in effect, of the Company, and the Amended and Restated By-Laws, as currently in effect, of the Company, the resolutions of the Company's Board of Directors authorizing the Plans and the issuance of the Registered Shares thereunder and the resolutions of the Company's stockholders authorizing the Plans. We have also examined originals, or copies of originals certified to our satisfaction, of such agreements, documents, certificates and statements of the Company and other corporate documents and instruments, and have examined such questions of law, as we have considered relevant and necessary as a basis for this opinion letter. We have assumed the authenticity of all documents submitted to us as originals, the genuineness of all signatures, the legal capacity of all persons and the conformity with the original documents of any copies thereof submitted to us for examination. As to facts relevant to the opinions expressed herein, we have relied without independent investigation or verification upon, and assumed the accuracy and completeness of, certificates, letters and oral and written statements and representations of public officials and officers and other representatives of the Company.

Sidley Austin LLP is a limited liability partnership practicing in affiliation with other Sidley Austin partnerships

Based on the foregoing, we are of the opinion that each Registered Share that is newly issued pursuant to the Plans will be validly issued, fully paid and non-assessable when: (i) the Registration Statement, as finally amended, shall have become effective under the Securities Act; (ii) such Registered Share shall have been duly issued and delivered in accordance with the applicable Plan; and (iii) certificates representing such Registered Share shall have been duly executed, countersigned and registered and duly delivered to the person entitled thereto against payment of the agreed consideration therefor (in an amount not less than the par value thereof) or, if any Registered Share is to be issued in uncertificated form, the Company's books shall reflect the issuance of such Registered Share to the person entitled thereto against payment of the agreed consideration therefor (in an amount not less than the par value thereof), all in accordance with the applicable Plan.

This opinion letter is limited to the General Corporation Law of the State of Delaware. We express no opinion as to the laws, rules or regulations of any other jurisdiction, including, without limitation, the federal laws of the United States of America or any state or non-U.S. securities or blue sky laws.

We hereby consent to the filing of this opinion letter as an Exhibit to the Registration Statement and to all references to our Firm included in or made a part of the Registration Statement. In giving such consent, we do not thereby admit that we are in the category of persons whose consent is required under Section 7 of the Securities Act.

Very truly yours,

/s/ Sidley Austin LLP

Consent of Independent Registered Public Accounting Firm

The Board of Directors
The RealReal, Inc.:

We consent to the use of our report incorporated by reference herein.

Our report refers to a change in the Company's method of accounting for revenue due to the adoption of Accounting Standards Update 2014-09, Revenue from Contracts with Customers, on January 1, 2018.

/s/ KPMG LLP

San Francisco, California
July 2, 2019