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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

PAMELA MORENO, individually and on behalf of all others similarly situated,

Plaintiff,

v.

SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT, a public entity,

Defendant.

Case No. 3:17-cv-02911

~~[PROPOSED]~~ FINAL JUDGMENT

~~**[PROPOSED]**~~ **FINAL JUDGMENT**

The Court, having considered Plaintiff’s Motion for Final Approval (“Motion for Final Approval”) of the Class Action Settlement Agreement setting forth a protocol for case resolution (the “Protocol”) of the above-captioned matter (“Action”), brought by Plaintiff Pamela Moreno (“Plaintiff”) against Defendant San Francisco Bay Area Rapid Transit District (“Defendant”) (together, the “Parties”), and Plaintiff’s Motion for Approval of Attorneys’ Fees, Expenses, and Incentive Award, together with the exhibits thereto, the arguments and authorities presented by the Parties and their counsel at the Final Approval Hearing on January 17, 2019, finds that:

1. Unless defined herein, all capitalized terms in this Order shall have the respective meanings ascribed to the same terms in the Protocol.
2. This Court has jurisdiction over the subject matter of the Action and personal

1 jurisdiction over all Parties to the Action.

2 3. On October 4, 2018, this Court preliminarily approved the Protocol, and certified, for
3 purposes of adjudicating this Action, the Class consisting of: “All individuals who, at any time on or
4 after January 1, 2016, had their mobile device’s IMEI or geolocation collected by the BART Watch
5 App.” Excluded from the Settlement Class are (1) any Judge or Magistrate presiding over this action
6 and members of their families; (2) Defendant, Defendant’s subsidiaries, parents, successors,
7 predecessors, and any entity in which the Defendant or its parents have a controlling interest and
8 their current, former, purported, and alleged employees, officers, and directors; (3) counsel for
9 Plaintiff and Defendant; and (4) all persons who have previously had claims similar to those alleged
10 herein finally adjudicated or who have released their claims against Defendant.

11 4. The Protocol was the result of arm’s-length negotiations conducted in good faith by
12 experienced attorneys familiar with the legal and factual issues of this case in a proceeding presided
13 over by Chief Magistrate Judge Joseph C. Spero, and is supported by the Class Representative and
14 Class Counsel. The Class Representative and Class Counsel adequately represented the Class for
15 purposes of entering into and implementing the Protocol. The preliminary appointment of Rafey S.
16 Balabanian and Todd Logan of Edelson PC as Class Counsel is hereby confirmed.

17 5. The Defendant properly and timely notified the appropriate government officials of
18 the Agreement, pursuant to 28 U.S.C. § 1715. Further, more than ninety (90) days have elapsed since
19 Defendant provided said notice.

20 6. The Court finds that the Protocol meets all applicable requirements of Rule 23 of the
21 Federal Rules of Civil Procedure for purposes of adjudicating a resolution of the Action only,
22 including that the Class is sufficiently numerous, that there are questions of law and fact common to
23 members of the Class, that the claims and defenses of the representative parties are typical of the
24 claims and defenses of the class, and that the representative parties and their counsel fairly and
25 adequately protect the interests of the Class.

26 7. The Protocol is fair, reasonable, adequate, and in the best interests of the Class in
27 light of the complexity, expense, and duration of litigation, the risks involved in establishing liability
28 and damages and in maintaining the class action through trial and appeal, and the likelihood of

1 recovering monetary relief. The Court further finds that:

- 2 (i) there was no collusion in connection with the Protocol;
- 3 (ii) the Protocol was the product of informed, arm's-length negotiations
4 among competent, able counsel; and
- 5 (iii) the record is sufficiently developed and complete to have enabled
6 Plaintiff and Defendant to have adequately evaluated and considered
7 their positions.

7 **IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED THAT:**

8 8. Judgment is entered in favor of Plaintiff and against Defendant as to Count 1 of the
9 Second Amended Complaint (Dkt. 63).

10 9. The Protocol is finally approved as fair, reasonable, adequate, and in the best interests
11 of the Class. The Parties are directed to consummate the Protocol in accordance with its terms. The
12 Parties and Class Members are bound by the terms and conditions of the Protocol.

13 10. Upon the Effective Date of this Final Judgment, the Class Members shall be deemed
14 to have fully, finally, and forever released, relinquished, and discharged Injunctive Claims against
15 Defendant except as provided by the Final Judgment.

16 11. The Class Members' claims for monetary damages are expressly preserved.

17 12. Other than as set forth in the Protocol and this Order, the Parties shall bear their own
18 costs and attorneys' fees.

19 13. Upon the Effective Date, the above adjudication of claims and the Protocol will be
20 binding on, and have *res judicata* and preclusive effect in, all pending and future lawsuits or other
21 proceedings maintained by or on behalf of Plaintiff and all other Class Members, and their heirs,
22 executors, administrators, successors, and assigns for injunctive relief sought in the Action. All Class
23 Members shall be permanently barred and enjoined from filing, commencing, prosecuting,
24 intervening in, or prosecuting any Injunctive Claim(s) sought in the Action against Defendant in any
25 court, arbitration, tribunal, forum, or proceeding.

26 14. The following injunction must be implemented on or before the Effective Date and
27 remain in effect for a period of four (4) years:

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- 1 A. With respect to the BART Watch App, Defendant will only obtain limited
 2 information—other than through appropriate and lawful court processes—when a
 3 Bart Watch App user submits a “report,” registers the App, or updates Personal
 4 Identification Information. That limited information will not include any
 5 “International Mobile Equipment Identity” numbers.
- 6 B. Specifically, when a user submits a “report,” Defendant will only obtain the following
 7 information:
- 8 ○ The reporting individual’s first name, if provided;
 - 9 ○ The reporting individual’s last name, if provided;
 - 10 ○ The reporting individual’s email, if provided
 - 11 ○ The reporting individual’s phone number, if provided;
 - 12 ○ An alert ID;
 - 13 ○ The report location ID;
 - 14 ○ An image and/or video, if provided by the reporting individual
 - 15 ○ The date;
 - 16 ○ The time;
 - 17 ○ The report status;
 - 18 ○ The report title;
 - 19 ○ The report type;
 - 20 ○ Report details (text details provided by user);
 - 21 ○ The UserID of the reporting individual;
 - 22 ○ The reporting individual’s latitude, if provided;
 - 23 ○ The reporting individual’s longitude, if provided;
 - 24 ○ The organizationID of the entity to which the report is sent;
- 25 C. When a user registers the App or updates Personal Identification Information,
 26 Defendant will only obtain the following:
- 27 ○ The reporting individual’s first name, if provided;
 - 28 ○ The reporting individual’s last name, if provided;
 - The reporting individual’s email, if provided;
 - The reporting individual’s phone number, if provided;
 - The reporting device model.
- 29 D. The categories of information described in Sections 2.1(B)-(C) above represent all
 30 data that BART currently receives from Elerts through the BART Watch App. After a
 31 90 day grace period beginning on the date of Final Approval, BART will make all
 32 reasonable efforts to ensure that, moving forward, it is precluded from receiving from
 33 Elerts, through the BART Watch App, any information other than the information
 34 described in Section 2.1(B)-(C).
- 35 E. If BART in the future uses “Cellular Communications Interceptions Technology,”
 36 BART will comply with all requirements set forth under the Cellular
 37 Communications Interception Act, Cal. Gov’t Code § 53166(b)-(c).
- 38 F. Unless required by a specific law enforcement investigation or through appropriate
 and lawful court processes, BART will make all reasonable efforts not to retain
 geolocation information from the BART Watch App for a period of longer than three
 years.

15. The Parties may, without further approval from the Court, agree to adopt
 amendments, modifications and expansions of the Protocol and its implementing documents

1 (including all exhibits to the Protocol) as long as they are consistent in all material respects with the
2 Final Judgment and do not limit the rights of the Class Members.

3 16. The Court awards to Class Counsel \$_____, which shall include all
4 attorneys' fees and reimbursable expenses associated with the Action.

5 17. The Court awards to the Class Representative an incentive award of \$_____ for her time and effort serving the Class in this Action.

7 18. The certification of the Class shall be binding only with respect to the resolution of
8 the Action. In the event that the Agreement is terminated pursuant to its terms or the Court's
9 approval of the Protocol is reversed, vacated, or modified in any material respect by this or any other
10 court, any Final Judgment or other order entered by the Court in accordance with the terms of the
11 Agreement, including but not limited to certifying any class for settlement purposes, shall be deemed
12 vacated, *nunc pro tunc*, and the Parties and the Class Members shall be returned to the *status quo*
13 *ante* with respect to the Action as if they had never entered into the Protocol.

14 19. Without affecting the finality of this Final Judgment for purposes of appeal, the Court
15 retains jurisdiction as to all matters related to the administration, consummation, enforcement, and
16 interpretation of the Agreement and this Final Judgment, and for any other necessary purpose.

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18 **IT IS SO ORDERED.**

19
20 DATED: January 28, 2019

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22 _____
23 Hon. Jacqueline Scott Corley

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26 //

1 Dated: October 11, 2018

EDELSON PC

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/s/ Todd Logan

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Todd Logan

Attorneys for Plaintiff Pamela Moreno

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Dated: October 11, 2018

LEWIS BRISBOIS BISGAARD & SMITH LLP

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/s/ Gordon J. Calhoun

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Gordon J. Calhoun

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*Attorneys for Defendant San Francisco Bay
Area Rapid Transit*

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