

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

In re Morgan Stanley Data Security Litigation

Civil Action No. 1:20-cv-05914-PAE

**[PROPOSED]
FINAL JUDGMENT APPROVING CLASS ACTION SETTLEMENT**

WHEREAS, Plaintiffs John and Midori Nelson, Sylvia Tillman, Mark Blythe, Vivian Yates, Cheryl and Richard Gamen, Amresh Jaijee, Richard Mausner, Desiree Shapouri, and Howard Katz (collectively, “Plaintiffs”), on behalf of themselves and all other Settlement Class Members, and Defendant Morgan Stanley Smith Barney, LLC (“Defendant” or “Morgan Stanley” and together with Plaintiffs, the “Parties”), have determined to settle all claims asserted against Defendant and its predecessors, successors, assigns, subsidiaries, and affiliates, in this Action with prejudice on the terms and conditions set forth in the Settlement Agreement and Release dated December 31, 2021 (ECF No. 81-2) (the “Settlement Agreement”), subject to approval of this Court (the “Settlement”);

WHEREAS, unless otherwise defined in this Final Judgment, the capitalized terms herein shall have the same meaning as they have in the Settlement Agreement;

WHEREAS, by Order dated January 18, 2022 (ECF No. 82) (the “Preliminary Approval Order”), Judge Analisa Torres: (i) preliminarily approved the Settlement; (ii) ordered the notice of the proposed Settlement be provided to the Settlement Class; (iii) provided Settlement Class Members with the opportunity to object to the proposed Settlement; (iv) provided Settlement Class Members with the opportunity to exclude themselves from the Settlement Class; and (v) scheduled

a hearing regarding final approval of the Settlement, as modified by subsequent Stipulation and Order regarding Scheduling dated April 28, 2022 entered by this Court (ECF No. 110);

WHEREAS, due and adequate notice has been given to the Settlement Class;

WHEREAS, the Court conducted a hearing on August 5, 2022 (the “Fairness Hearing” to consider, among other things, (i) whether the terms and conditions of the Settlement are fair, reasonable and adequate to the Settlement Class, and should therefore be approved; and (iii) whether a judgment should be entered dismissing the Action with prejudice against Defendant; and

WHEREAS, the Court having considered all papers filed and proceedings held herein in connection with the Settlement, and all oral and written comments received regarding the Settlement and otherwise being fully informed in the premises and good cause appearing therefore,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED, that:

1. **Jurisdiction.** This Court finds that it has subject matter jurisdiction under 28 U.S.C. § 1331 to enter this Final Judgment and has personal jurisdiction over Plaintiffs and Morgan Stanley (in this Action only and for purposes of this Settlement only) and all Class Members.

2. **Class Action Fairness Notice.** The Court finds that Morgan Stanley has complied with the obligations imposed on it under the Class Action Fairness Act of 2005, 28 U.S.C. § 1715, and its notice provisions have been satisfied. *See* ECF No. 83.

3. **Class Certification for Settlement Purposes.** The requirements of Federal Rules of Civil Procedure 23(a) and 23(b)(3) have been satisfied, and based on the record before the Court, the Court hereby finally certifies, for the purposes of settlement of the Released Claims set forth in the Settlement Agreement, the following Settlement Class:

All Individuals with existing or closed Morgan Stanley accounts established in the United States who received the Notice Letters regarding the Data Security

Incidents.

Excluded from the Class are: (i) Defendant; (ii) the subsidiaries, parents, and affiliates of Defendant; (iii) any directors of the entities covered by (i) and (ii) during the Class Period and members of their immediate families; (iv) any firm, trust, corporation, or other entity in which Defendant has or had a controlling interest; and (v) the legal representatives, heirs, successors, and assigns of any such excluded persons or entities. Also excluded from the Class are those persons and entities who timely and validly request exclusion therefrom by 60 days after the Notice date.

4. In so holding, the Court finds that the Settlement Class meets all of the applicable requirements of Rule 23(a) and (b)(3) of the Federal Rules of Civil Procedure, solely for settlement purposes. The Court hereby finds, in the specific context of this Settlement that: (a) the Settlement Class is so numerous that joinder of all Class Members is impracticable, FED. R. CIV. P. 23(a)(1); (b) common questions of law and fact exist with regard to Morgan Stanley's alleged data breach, FED. R. CIV. P. 23(a)(2); (c) Class Plaintiffs' claims in this litigation are typical of those of the Class members, FED. R. CIV. P. 23(a)(3); and (d) Class Plaintiffs' interests do not conflict with, and are co-extensive with, those of the absent Class Members, all of whose claims arise from the identical factual predicate, and Class Plaintiffs and Class Counsel have adequately represented the interests of all Class Members, FED. R. CIV. P. 23(a)(4). The Court also finds that common issues of fact and law predominate over any questions affecting only individual members and that a class action is superior to other methods for fairly and efficiently adjudicating this controversy. FED. R. CIV. P. 23(b)(3).

5. Pursuant to FED. R. CIV. P. 23(g), Linda P. Nussbaum of Nussbaum Law Group, P.C. and Jean S. Martin of Morgan & Morgan are certified as Class Counsel for the Settlement Class.

6. The Plaintiffs are certified as class representatives on behalf of the Settlement Class.

7. **Settlement Notice.** The Court finds that the emailed and mailed notice, publication notice, website, and Class Notice plan implemented pursuant to the Settlement Agreement and Judge Analisa Torres' Preliminary Approval Order: (a) were implemented in accordance with the Preliminary Approval Order; (b) constituted the best notice practicable under the circumstances; (c) constituted notice that was reasonably calculated, under the circumstances, to apprise Class Members of the pendency of this Action, of the effect of the proposed Settlement (including the Releases to be provided thereunder), of their right to exclude themselves from or object to the proposed Settlement, of their right to appear at the Fairness Hearing, of the Claims Process, and of Class Counsel's application for an award of attorneys' fees, for reimbursement of expenses associated with the Action, and any Service Award; (d) provided a full and fair opportunity to all Class Members to be heard with respect to the foregoing matters; (e) constituted due, adequate and sufficient notice to all persons and entities entitled to receive notice of the proposed Settlement; and (f) met all applicable requirements of Rule 23 of the Federal Rule of Civil Procedure, the United States Constitution, including the Due Process Clause, and any other applicable rules or law.

8. **Response of the Class Members.** The Court finds that 300 Class Members have validly requested to be excluded from the Settlement Class. Those excluded Class Members are identified at ECF No. _____.

9. The Court finds that 43 timely objections to the proposed Settlement have been submitted. Notwithstanding the objections, the Court has independently reviewed and considered all relevant factors and has conducted an independent examination into the propriety of the proposed Settlement. The Court finds all objections are without merit and they are hereby overruled.

10. **Final Settlement Approval and Dismissal of Claims.** Pursuant to Rule 23 of the Federal Rules of Civil Procedure, this Court hereby finally approves the Settlement, as set forth in the Settlement Agreement. This Court finds that the Settlement meets all requirements of Rule 23(e) of the Federal Rules of Civil Procedure and is, in all respects, fair, reasonable and adequate, and in the best interests of the Settlement Class, including Plaintiffs. This Court further finds that the Settlement set forth in the Settlement Agreement is the result of arm's-length negotiations between experienced counsel representing the interests of the Parties, that Class Counsel and Plaintiffs adequately represented the Settlement Class for the purpose of entering into and implementing the Settlement Agreement, that the relief provided for the Settlement Class is adequate, and that the Settlement Agreement treats Class Members equitably relative to each other. Accordingly, the Settlement embodied in the Settlement Agreement is hereby approved in all respects. The Parties are hereby directed to carry out the Settlement Agreement in accordance with all of its terms and provisions, including the termination provisions.

11. It is hereby determined that Plaintiffs and the Releasing Parties are bound by the Settlement Agreement and this Final Judgment, and the Action and the Released Claims against any of the Released Parties, as provided under the Settlement Agreement, are hereby dismissed with prejudice and released. The Parties shall bear their own costs, except as otherwise provided in the Settlement Agreement.

12. Separate orders shall be entered regarding Class Counsel's Fee and Expense Application and plaintiffs' service awards. Such orders shall in no way affect or delay the finality of this Final Judgment and shall not affect or delay the Effective Date of the Settlement.

13. **Releases.** Each Class Member must execute a release and covenant not to sue in conformity with the Settlement Agreement, as incorporated into the Proof of Claim and Release

form, in order to receive the Class Member's share(s), if any, of the Net Settlement Amount defined in the Settlement Agreement. The Court hereby confirms the appointment of Epiq Class Action & Claims Solutions, Inc. as Settlement Administrator and directs that the Settlement Administrator shall ensure that each Proof of Claim and Release form provided to Class Members contains a copy of such release and covenant not to sue.

14. The Court hereby approves the Releasing Parties'¹ releases of the Released Claims² against the Released Parties³ as set forth in the Settlement Agreement and this Final Judgment. Upon the Effective Date, the Releasing Parties shall have fully, finally, and forever waived, released, relinquished, and discharged (i) all Released Claims against the Releasing Parties, regardless of whether such Releasing Party executes and delivers a proof of claim and release form, and (ii) any rights to the protections afforded under California Civil Code § 1542⁴ and/or

¹ "Releasing Parties" or "Releasing Party" means, as of the Effective Date, all Settlement Class Representatives and all Settlement Class Members, on behalf of themselves, their heirs, assigns, executors, beneficiaries, administrators, predecessors, successors, and/or any other person purporting to claim on behalf of any Settlement Class Representatives or Settlement Class Members, shall expressly, generally, absolutely, and unconditionally release and discharge any and all Released Claims, except for claims relating to the enforcement of this Agreement, against (i) Defendant, (ii) any of Defendant's current, former, or future parents, affiliates, subsidiaries, agents, representatives, directors, officers, employees, insurers, successors, assigns, and attorneys, and (iii) any current, former, or future parents, affiliates, subsidiaries, agents, representatives, directors, officers, employees, insurers, successors, assigns, and attorneys of any person or entity identified in part (ii).

² "Released Claim" means any claim that was or could have been asserted in the Action, as well as any claim, cause, liability, right, entitlement, demand, suit, obligation, damage, including consequential damages, losses or costs, punitive damages, attorneys' fees and costs, actions or causes of action, of every kind or description—whether known or Unknown (as the term "Unknown Claims" is defined herein), suspected or unsuspected, asserted or unasserted, liquidated or unliquidated, legal, statutory, or equitable—related to or arising from any of the facts alleged in the Action.

³ "Released Parties" or "Released Party" means the Defendant in this Action, its predecessors, successors and assigns, its past and present direct and indirect parents, subsidiaries and affiliates, and each of their respective current and former officers, directors, employees, managers, members, partners, agents (in their capacity as agents of Morgan Stanley), shareholders (in their capacity as shareholders of Morgan Stanley), attorneys, insurers, or legal representatives, and the predecessors, successors, heirs, executors, administrators, and assigns of each of the foregoing. As used in this provision, "affiliates" means entities controlling, controlled by, or under common control with a Released Party.

⁴ Although the foregoing release is not a general release, such release constitutes a waiver of Section 1542 of the California Civil Code (to the extent it applies to the Action), which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR
RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR

any other similar, comparable, or equivalent laws; (b) shall forever be enjoined from prosecuting in any forum any Released Claim against any of the Released Parties; and (c) agrees and covenants not to sue any of the Released parties on the basis of any Released Claims or to assist any third party in commencing or maintaining any suit against any Released Party related in any way to any Release Claims.

15. **Binding Effect.** The terms of the Settlement Agreement and of this Final Judgment shall be forever binding on Defendant, Plaintiffs, and all other Class Members (regardless of whether or not any individual Class Member submits a Claim Form or seeks or obtains a distribution from the Net Settlement Fund), as well as their respective heirs, executors, administrators, predecessors, successors and assigns in their capacities as such.

16. The Court declares that the Settlement Agreement and the Final Judgment shall be binding on, and shall have *res judicata* and preclusive effect in, all pending and future lawsuits or other proceedings against a Released Party involving the Released Claims that are maintained by or on behalf of Class Plaintiffs and each Releasing Party, whether or not they object to the Settlement and whether or not they make a claim for payment from the Net Settlement Amount, regardless of whether the Releasing Party previously initiated or subsequently initiates individual

AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER,
WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE
DEBTOR OR RELEASED PARTY.

This release also constitutes a waiver of any and all provisions, rights, and benefits of any federal, state or foreign law, rule, regulation, or principle of law or equity that is similar, comparable, equivalent to, or which has the effect of, Section 1542 of the California Civil Code. The Settling Class Members acknowledge that they are aware that they may hereafter discover facts in addition to, or different from, those facts which they know or believe to be true with respect to the subject matter of this Settlement Agreement, but that it is their intention to release fully, finally, and forever all of the Released Claims, and in furtherance of such intention, the release shall be irrevocable and remain in effect notwithstanding the discovery or existence of any such additional or different facts. In entering and making this Settlement Agreement, the Parties assume the risk of any mistake of fact or law and the release shall be irrevocable and remain in effect notwithstanding any mistake of fact or law.

litigation or other proceedings involving the Released Claims, and even if such Releasing Party never received actual notice of the Action or this proposed Settlement.

17. The Court permanently bars and enjoins Plaintiffs and all Releasing Parties from: (a) filing, commencing, prosecuting, intervening in, or participating (as class members or otherwise) in any other lawsuit or administrative, regulatory, arbitration, or other proceeding in any jurisdiction against the Defendant or any of the Released Parties based on the Released Claims; (b) filing, commencing, or prosecuting a lawsuit or administrative, regulatory, arbitration, or other proceeding as a class action on behalf of any Class Members (including by seeking to amend a pending complaint to include class allegations or seeking class certification in a pending action), against Defendant or any of the Released Parties based on the Released Claims; or (c) organizing Class Members into a separate group, class, or subclass for purposes of pursuing as a purported class action any lawsuit or administrative, regulatory, arbitration, or other proceeding (including by seeking to amend a pending complaint to include class allegations, or seeking class certification in a pending action) against the Defendant or any of the Released Parties based on the Released Claims.

18. The Court permanently bars and enjoins claims by any Person against the Released Parties for contribution, indemnification, or similar claims (however denominated) for all or a portion of any amounts paid or awarded in the Action by way of settlement, judgment, or otherwise. To the extent permitted by law, the Court permanently bars and enjoins claims by Defendant and any Released Parties for contribution, indemnification, or similar claims (however denominated) for all or a portion of any amounts paid or awarded in the Action by way of settlement, judgment, or otherwise against any other Person subsequently added or joined as a party in the Action. Should any court determine that the Defendant is/was legally entitled to any

kind of set-off, apportionment, contribution, indemnification, or similar claims from Morgan Stanley arising out of or related to Released Claims, any money judgment subsequently obtained by the Releasing Parties against any Defendant shall be reduced to an amount such that, upon paying the entire amount, the Defendant would have no claim for set-off, apportionment, contribution, indemnification, or similar claims against Morgan Stanley.

19. **No Admission.** Neither the Settlement Agreement (nor its exhibits), whether or not it shall become Final, nor any negotiations, documents exchanged among counsel for Plaintiffs and Morgan Stanley in connection with settlement discussions, and discussions associated with them, nor the Final Judgment are or shall be deemed or construed to be an admission, adjudication, or evidence of: (a) any violation of any statute or law or of any liability or wrongdoing by Defendant or any Released Party; (b) the truth of any of the claims or allegations alleged in the Action; (c) the incurrence of any damage, loss, or injury by any Person; or (d) the propriety of certification of a class other than solely for purposes of the Settlement. Further, neither the Settlement Agreement (nor its exhibits), whether or not it shall become final, nor any negotiations, documents exchanged among counsel for Plaintiffs and Morgan Stanley in connection with settlement discussions, and discussions associated with them, nor the Final Judgment, may be discoverable, offered or received in evidence, or used directly or indirectly, in any way, whether in the Action or in any other action or proceeding of any nature, by any Person, except if warranted by existing law in connection with a dispute under the Settlement Agreement or an action (including this Action) in which the Settlement Agreement is asserted as a defense.

20. **Modification of the Settlement Agreement.** The Parties, without the need for approval from the Court, may adopt such amendments, modifications, and expansions of the Settlement Agreement and all exhibits thereto as (i) shall be consistent in all material respects with

the Final Approval Order and Final Judgment; and (ii) do not limit the rights of Settling Class Members.

21. **Rule 11 Finding.** The Court finds that, during the course of the Action, the Parties and their respective counsel at all times complied with the requirements of Rule 11 of the Federal Rules of Civil Procedure as to each other. Any data or other information provided by Class Members in connection with the submission of claims shall be held in strict confidence, available only to the Settlement Administrator, Class Counsel, and experts or consultants acting on behalf of the Settlement Class. In no event shall a Class Member's data or personal information be made publicly available, except as provided for herein or upon Court Order for good cause shown.

22. **Termination of Settlement.** Notwithstanding the entry of this Final Judgment, if the Settlement Agreement is validly terminated by Plaintiffs or Morgan Stanley, is disapproved in whole or in part by the Court, any appellate court, or any other court of review, or does not become Final, then the provisions of this Final Judgment dismissing Plaintiffs' claims shall be null and void with respect to such Settlement; Plaintiffs' claims shall be reinstated; Defendant's defenses shall be reinstated; the certification of the Settlement Class and final approval of the proposed Settlement, and all actions associated with them, including but not limited to any requests for exclusion from the Settlement previously submitted and deemed to be valid, shall be vacated and be of no force and effect; the Settlement Agreement, including its exhibits, and any and all negotiations, documents, and discussions associated with it and the releases set forth herein, shall be without prejudice to the rights of any Party, and of no force or effect; and the Parties shall be returned to their respective positions before the Settlement Agreement was signed. Notwithstanding the language in this Section, any provision(s) in the Settlement Agreement that

the Parties have agreed shall survive its termination shall continue to have the same force and effect intended by the Parties.

23. **Claims Administration Process.** The Settlement Administrator shall administer the claims administration process, including the calculation of claims submitted by Class Members and distribution of the Net Settlement Fund to Authorized Claimants, pursuant to the Court-approved Claims Process. All Class Members shall submit a Proof of Claim and Release (“Claim”) under penalty of perjury by August 11, 2022, the date set forth in the Notice of Proposed Class Action Settlement, Fairness Hearing thereon, and Class Members’ Rights (“Notice”) sent to Class Members. Class Counsel may, in their discretion, accept for processing late-submitted Claims so long as the distribution of the Net Settlement Amount is not materially delayed.

24. If a Claim is deficient, the Settlement Administrator shall send the Class Member a deficiency letter which will give the Class Member at least twenty (20) days to cure the deficiency. If the Class Member fails to cure the deficiency within the specified period, the Settlement Administrator shall send the Class Member a letter notifying the Class Member that the Claim has been rejected. The rejection letter will advise the Class Member of the reason(s) for the rejection of the Claim and his, her, or its right to review the determination of the Claim. If the Claim is still rejected, the Class Member shall then be allowed to move this Court for review no later than seven (7) days after Class Counsel submits an application for the distribution of the Net Settlement Amount to eligible claimants.

25. **Retention of Jurisdiction.** Without affecting the finality of the Final Judgment for purposes of appeal, the Court hereby retains continuing jurisdiction over the implementation and enforcement of the Settlement Agreement and the Settlement contemplated thereby and over the enforcement of this Final Judgment. The Court also retains exclusive jurisdiction to resolve any

disputes that arise out of or relate to the Settlement Agreement, the Settlement, or the Settlement Fund, to consider or approve administration costs and fees, including but not limited to fees and expenses incurred to administer the Settlement after the entry of the Final Judgment, and to consider or approve the amounts of distributions to Class Members. In addition, without affecting the finality of this Final Judgment, Plaintiffs, Morgan Stanley, and the Settlement Class hereby irrevocably submit to the exclusive jurisdiction of the United States District Court for the Southern District of New York for any suit, action, proceeding, or dispute arising out of or relating to this Final Judgment or the Settlement Agreement. Any disputes involving Plaintiffs, Morgan Stanley, or Class Members concerning the implementation of the Settlement Agreement shall be submitted to the Court.

26. **Entry of Final Judgment.** There is no just reason for delay in the entry of this Judgment as a final judgment of this Action. Accordingly, the Clerk of the Court is expressly directed pursuant to Rule 54(b) of the Federal Rules of Civil Procedure to immediately enter this final judgment in this Action.

IT IS SO ORDERED.

Signed this ___ day of August, 2022.

The Honorable Paul A. Engelmayer
United States District Judge