

IN THE COURT OF COMMON PLEAS OF BUTLER COUNTY, PENNSYLVANIA

DIANA HEUSER, on behalf of herself and all
others similarly situated,

Plaintiff,

v.

NEXTIER BANK, N.A.,

Defendant.

Civil Division

Case No. AD-2023-10076

Hon. Dr. S. Michael Yeager

2024 NOV 19 AM 10:37

PROthonotary's OFFICE
BUTLER COUNTY
ENTERED & FILED

**ORDER PRELIMINARILY APPROVING CLASS SETTLEMENT
AND CERTIFYING CLASS FOR SETTLEMENT PURPOSES**

The Parties to the above-captioned action currently pending against Defendant, NexTier Bank, N.A. ("NexTier"), have agreed to a settlement, the terms and conditions of which are set forth in an executed Settlement Agreement and Release ("Settlement" or "Agreement").¹ The Parties reached the Settlement through arm's-length negotiations. Under the Settlement, subject to the terms and conditions therein and subject to Court approval, Plaintiff and the proposed Settlement Class would fully, finally, and forever resolve, discharge, and release their claims in exchange for NexTier's total payment of \$165,000.00 to create a Settlement Fund to benefit the Settlement Class, inclusive of all attorneys' fees, costs and a Service Award to Plaintiff, and the cost of settlement administration and the Notice program.

The Settlement has been filed with the Court, and Plaintiff has filed an Unopposed Motion for Preliminary Approval of the Settlement and for Certification of Class ("Motion"). Upon considering the Motion and exhibits thereto, the Settlement, the record in these proceedings, the

¹ Unless otherwise stated, all capitalized defined terms used herein have the same meanings ascribed in the Agreement.

representations and recommendations of Class Counsel, and the requirements of law, the Court finds that: (1) this Court has jurisdiction over the subject matter and the Parties to these proceedings; (2) the parties have provided the Court with information sufficient to enable it to determine that notice should be given to the Settlement Class; (3) the proposed Settlement Class meets the requirements of Pennsylvania Rules of Civil Procedure 1702, 1708, and 1709 and should be certified for settlement purposes only; (4) the person and entities identified below have adequately represented the proposed Settlement Class and should be appointed class representative and Class Counsel; (5) the Settlement is the result of informed, good-faith, arm's-length negotiations between the parties and their capable and experienced counsel and is not the result of collusion; (6) the Settlement is within the range of reasonableness and should be preliminarily approved; (7) NexTier should disclose data concerning Class Members to the Claims Administrator for purposes of implementing the proposed Notice program; (8) the proposed Notice program and proposed forms of Notice satisfy Pennsylvania Rule of Civil Procedure 1712 and constitutional due process requirements, and are reasonably calculated to apprise the Settlement Class of the pendency of the Lawsuit, class certification, the terms of the Settlement, Class Counsel's application for an award of attorneys' fees and expenses ("Fee Application"), request for Service Award for Plaintiff, and their rights to opt-out of the Settlement or object to the Settlement; (9) good cause exists to schedule and conduct a final approval hearing, pursuant to Pennsylvania Rule of Civil Procedure 1714, to assist the Court in determining whether to grant final approval of the Settlement and enter the Final Approval Order, and whether to grant Class Counsel's Fee Application and request for Service Award for Plaintiff; and (10) the other related matters pertinent to the preliminary approval of the Settlement should also be approved.

Based on the foregoing, **IT IS HEREBY ORDERED AND ADJUDGED** as follows:

1. The terms of the Agreement are hereby incorporated by reference in this Order as if fully set forth herein. First-letter capitalized terms in this Order shall, unless otherwise defined herein, have the same meaning and definition as in the Agreement.

2. The Court has jurisdiction over the subject matter and Parties to this proceeding.

3. Venue is proper in this County.

Provisional Class Certification and Appointment of Class Representative and Class Counsel

4. The Court finds, for settlement purposes, that the factors delineated in Pennsylvania Rules of Civil Procedure 1702, 1708 and 1709 are present and that certification of the proposed Settlement Class is appropriate under Rule 1710. The Court therefore provisionally certifies the following class:

Any Person who is a deposit account customer of Defendant NexTier Bank, N.A., who resides in the Commonwealth of Pennsylvania and who was charged any Retry NSF Fee between January 1, 2017 and December 31, 2022, inclusive, and who does not timely and validly opt out or request exclusion from the Settlement Class. The Settlement Class shall include both consumer and business customers. The Settlement Class shall not include any Person who held a deposit account with Mars Bank on February 16, 2024.

5. Specifically, the Court finds, for settlement purposes only, that certification is appropriate under Rules 1702, 1708, 1709, and 1710 of the Pennsylvania Rules of Civil Procedure.

i. Numerosity: In the Action, thousands of individuals are members of the proposed Settlement Class. Their joinder is impracticable.

ii. Commonality: Here, the commonality requirement is satisfied because there are multiple questions of law and fact that center on NexTier's class-wide policies and practices and are common to the Settlement Class.

iii. Typicality: The Plaintiff's claims are typical of the Settlement Class for purposes of this settlement because they concern the same alleged NexTier policies and practices, arise from the same legal theories, and allege the same types of harm and entitlement to relief.

iv. Adequacy: Adequacy relates to: (1) whether the proposed class representatives have interests antagonistic to the Settlement Class; and (2) whether the proposed class counsel has the competence to undertake the litigation at issue. Adequacy is satisfied because there are no conflicts of interest between the Plaintiff and the Settlement Class, and Plaintiff has retained competent counsel to represent her and the Settlement Class. Class Counsel here regularly engage in consumer class litigation and other complex litigation similar to the present Lawsuit, and have dedicated substantial resources to the prosecution of the Lawsuit. Moreover, the Plaintiff and Class Counsel have vigorously and competently represented the interests of the Settlement Class in the Lawsuit.

v. Predominance and Superiority: Both are satisfied for settlement purposes, as well, because the common legal and alleged factual issues here predominate over individualized issues, and resolution of the common issues for thousands of members of the Settlement Class in a single, coordinated proceeding is superior to thousands of individual lawsuits addressing the same legal and factual issues. Based on the record currently before the Court, the predominance requirement is satisfied here for settlement purposes because common questions present a significant aspect of the case and can be resolved for all Settlement Class members in a single common judgment.

6. The named Plaintiff, Diana Heuser, is designated as class representative (“Class Representative”).

7. The following firms are appointed as Class Counsel:

Kenneth J. Grunfeld
PA Attorney ID: 84121
Kopelowitz Ostrow P.A.
65 Overhill Road
Bala Cynwyd, PA 19004
Telephone: (215) 967-8799
grunfeld@kolawyers.com

Jeffrey D. Kaliel
Sophia G. Gold
KALIELGOLD PLLC
1100 15th St., NW, 4th Floor
Washington, D.C. 20005
(202) 350-4783
jkaliel@kaliellpllc.com
sgold@kalielgold.com

Preliminary Approval of the Settlement

8. Before the Court grants preliminary approval of a proposed class action settlement, it

must determine whether the settlement is “within the range of possible approval.” *Brophy v. Phila. Gas Works*, 921 A.2d 80, 88 (Pa. Commw. Ct. 2007). Settlement negotiations that involve arm’s length, informed bargaining with the aid of experienced counsel support a preliminary finding of fairness. See MANUAL FOR COMPLEX LITIGATION (Third) § 30.42 at 240 (1995) (“[A] presumption of fairness, adequacy, and reasonableness may attach to a class settlement reached in arms’ length negotiations between experienced, capable counsel after meaningful discovery”) (citation omitted).

9. The Court preliminarily approves the Settlement, and the exhibits attached to the Motion, as fair, reasonable and adequate. The Court finds that it has information sufficient to determine that Notice should be given to the Settlement Class. The information provided indicates that the Class Representative and Class Counsel have adequately represented the Settlement Class; that the Settlement reached is the product of informed, good-faith, arm’s-length negotiations between the parties and their capable and experienced counsel. The Court further preliminarily finds that the Settlement, including the exhibits appended to the Motion, is within the range of reasonableness and possible judicial approval, such that: (a) a presumption of fairness is appropriate for the purposes of preliminary settlement approval; and (b) it is appropriate to effectuate notice to the Settlement Class, as set forth below and in the Settlement, and schedule a final approval hearing to assist the Court in determining whether to grant final approval of the Settlement and enter Final Approval Order.

10. Subject to final approval of the proposed Settlement, and subject to the provision of Notice required by this Order, the Court approves the provisions of the Agreement making the Settlement and its release of claims binding on all Class Members, whether or not they actually receive notice of the Lawsuit or the Settlement.

Approval of Notice and Notice Program and Direction to Effectuate Notice

11. The Court approves the form and content of the Notice to be provided to the Settlement Class, substantially in the form appended to the Agreement. The Court further finds that the Notice Program, described in Section 4 of the Settlement Agreement is the best practicable under the circumstances. The Notice Program is reasonably calculated under the circumstances to apprise the Settlement Class of the pendency of the Action, class certification, the terms of the Settlement, their rights to opt-out of the Settlement or object to the Settlement, Class Counsel's Fee Application, and the request for Service Award for Plaintiff. The Notice and Notice program constitute sufficient notice to all persons entitled to notice. The Notice and Notice program satisfy all applicable requirements of law, including, but not limited to, Pennsylvania Rule of Civil Procedure 1712 and the Constitutional requirement of Due Process.

12. The Court directs that Epiq Class Action and Claims Solutions Inc. ("Epiq") act as the Claims Administrator.

13. The Court approves and orders the disclosure of NexTier data concerning Class Members to the Claims Administrator for purposes of implementing the Settlement's Notice Program, and the Claims Administrator shall keep such information confidential in accordance with the Agreement.

14. The Claims Administrator shall implement the Notice program, as set forth below and in the Agreement, using substantially the forms of Notice attached to the Agreement and approved by this Order. Notice shall be provided to the members of the Settlement Class pursuant to the Notice Program, as specified in Section 4 of the Agreement and approved by this Order.

Mailed Notice Program

15. The Claims Administrator shall administer the Notice program. Within 150 days from the date that this Order is entered, the Claims Administrator shall run the addresses through the

National Change of Address Database, and shall mail to all such members of the Settlement Class the Postcard Notice.

16. The Claims Administrator shall perform reasonable address traces for all Postcard Notices that are returned as undeliverable. The Claims Administrator shall promptly remail Postcard Notices to those members of the Settlement Class whose new addresses were identified as of that time through address traces.

17. All fees of and costs incurred by the Claims Administrator, including but not limited to all fees and costs associated with the Notice program, shall be paid from the Settlement Fund, as provided in Section 4(f) of the Agreement.

Settlement Website

18. The Claims Administrator will establish as soon as practicable following preliminary approval, but prior to the commencement of the Notice program, a settlement website as a means for members of the Settlement Class to obtain notice of and information about the Settlement, through and including hyperlinked access to the Agreement, the Long-Form Notice, this Preliminary Approval Order, and such other documents as Class Counsel and NexTier's Counsel agree to post or that the Court orders posted on the website. These documents shall remain on the settlement website at least until the entry of a Final Approval Order. The URL of the settlement website shall be www.nexttierlitigation.com or such other URL as Counsel may subsequently agree upon in writing.

19. All fees of and costs associated with the settlement website shall be paid from the Settlement Fund, as provided in the Settlement Agreement.

20. Epiq is directed to perform all other responsibilities under the Notice program assigned to Claims Administrator.

Final Approval Hearing, Opt-Outs, and Objections

21. A Final Approval Hearing shall be held before the undersigned no earlier than 205 days following entry of this Order, on SEPTEMBER 3, 2025 at 9:00 O'CLOCK A.M. Courtroom # 3 of the Butler County Courthouse, located at 124 W Diamond St, Butler, PA 16001, to determine, among other things: (a) whether the Settlement should be finally approved as fair, reasonable, and adequate (b) whether the Action should be dismissed with prejudice as to the Plaintiff, Diana Heuser, and all Settlement Class members, pursuant to the terms of the Agreement; (c) whether Settlement Class members should be bound by the release set forth in Section 14 of the Agreement; (d) whether the Settlement Class should be finally certified; (f) the amount of any Service Award for Plaintiff; and (e) the amount of attorneys' fees and costs to be awarded to Class Counsel based on their Fee Application. The Final Approval Hearing may be adjourned or continued by the Court without further notice to the members of the Settlement Class.

22. The Court directs that any person within the Settlement Class definition who wishes to be excluded from the Settlement Class may exercise their right to opt-out of the Settlement Class by completing and mailing a request for exclusion ("Opt-Out") to the address set forth in the Class Notice. Such request for exclusion must be postmarked no later than the Bar Date to Opt Out, as specified in the Notice. For a Class Member's Opt-Out to be valid, it must:

- (i) be signed by all holders of the applicable Account;
- (ii) include the full name, address, and Account number(s) of the person(s) requesting exclusion;
- (iii) be timely postmarked and mailed to the address designated in the Notice; and
- (iv) include the following statement "I/we request to be excluded from the proposed class settlement in Heuser v. NexTier Trust Company case."

23. A request for exclusion that does not comply with all the foregoing requirements, that is sent to an address other than the one designated in the Notice program, or that is not sent within

the time specified, shall be invalid, and the person(s) serving such a request shall be bound as a Settlement Class member and by the Agreement, if the Agreement is finally approved. No member of the Settlement Class may purport to exercise any exclusion rights of any other person, or purport to exclude other members of the Settlement Class as a group, aggregate, or class involving more than one person, or as an agent or representative. Any such purported exclusion shall be invalid and the member(s) of the Settlement Class that is or are the subject of the purported Opt-Out shall be a member or members of the Settlement Class and be treated and be bound by the Agreement and as a Settlement Class member for all purposes. Any member of the Settlement Class who successfully Opt-Out of the Settlement shall be deemed to have waived any rights or benefits under the Settlement, and will have no standing to object to the Settlement.

24. The Court further directs that any Class Member who wishes to object to the Settlement must file a written objection ("Objection") with the Court, and mail and serve it upon Class Counsel and NexTier's Counsel as specified in the Notice. For an Objection to be considered by the Court, the Objection must be postmarked no later than the Bar Date to Object, as specified in the Notice. To be considered valid, each Objection must be timely served and filed (as judged by the filing deadline and postmark date and time set forth), and must set forth:

- (i) The objector's name, address, telephone number, the last four digits of his or her customer number or former customer number, and the contact information for any attorney retained by the objector in connection with the objection or otherwise in connection with this case;
- (ii) A statement of the factual and legal basis for each objection and any exhibits the objector wishes the Court to consider in connection with the objection; and
- (iii) A statement as to whether the objector intends to appear at the Final Approval Hearing, either in person or through counsel, and, if through counsel, identifying the counsel by name, address, and telephone number.

25. Any Settlement Class member who wishes to object and appear at the final approval hearing in person instead of submitting only written Objections must, along with the required written

Objection and by the same due date, also file a written notice of intention to appear at the final approval hearing with the Clerk of the Court, and mail and serve the notice on Class Counsel and NexTier's Counsel, by the date specified herein. Any Class Member who does not submit a timely written Objection in complete accordance with this Order shall not be treated as having filed a valid Objection to the Settlement, shall be deemed as having waived his or her objections in this Lawsuit, and shall forever be barred from making any such objections in this Lawsuit.

Further Papers In Support of Settlement and Fee Application

26. Plaintiff shall file her Motion for Final Approval of the Settlement, and Class Counsel shall file their Fee Application and request for Service Award no later than 205 days following the Court's approval of the Preliminary Approval Order so that it can be heard on the Final Approval Hearing Date.

Effect of Failure to Approve Settlement or Termination

27. In the event of a termination as provided in the Settlement Agreement, all of the Parties' respective pre-Settlement claims and defenses will be preserved, including, but not limited to, Plaintiff's right to seek class certification and NexTier's right to oppose class certification. Any discussions, offers, or negotiations associated with the Settlement shall not be discoverable or offered into evidence or used in the Lawsuit or any other action or proceeding for any purpose, without prejudice to Plaintiff's right to seek class certification, and NexTier's right to oppose class certification. In such event, all parties to the Lawsuit shall stand in the same position as if the Agreement had not been negotiated, made or filed with the Court.

Use of Order

28. This Order shall not be construed or used as an admission, concession, or finding by or against NexTier of any fault, wrongdoing, breach, or liability, or of the appropriateness or

permissibility of certifying a class on contest, or for any purpose other than settlement. Nor shall the Order be construed or used as an admission, concession, or finding by or against Plaintiff or the Class Members that their claims lack merit or that the relief requested in their pleadings is inappropriate, improper, or unavailable, or as a waiver by any party of any defenses or claims.

Continuance of Hearing

29. The Court reserves the right to continue the Final Approval Hearing without further written notice, except that notice of any continuance shall be provided to any Class Member, or their counsel, who has filed an objection, and any such continuance shall be posted on the settlement website.

Stay/Bar of Other Proceedings

30. All proceedings in the Lawsuit are hereby stayed until further order of the Court, except as may be necessary to implement the terms of the Settlement. Pending final determination of whether the Settlement should be approved, Plaintiff, all persons in the Settlement Class, and persons purporting to act on their behalf are enjoined from commencing or prosecuting (either directly, representatively or in any other capacity) against any of the Defendant Releasees any action or proceeding in any court, arbitration forum or tribunal asserting any claims released pursuant to Section 13 of the Agreement.

31. Based on the foregoing, the Court sets the following schedule for the Final Approval Hearing and the actions which must precede it:

<u>Event</u>	<u>Deadline</u>
Establish the Settlement Website	As soon as practicable following preliminary approval, but no later than the date to the commencement of the Notice program

Complete the Mailed Notice Program	No later than 150 days from the date of the entry of the Preliminary Approval Order
Objections and Requests for Exclusion Deadline	No later than 180 days from the date of the entry of the Preliminary Approval Order
File Plaintiff's Motion for Final Approval of the Settlement, and Class Counsel's Fee Application and Request for Service Award for Plaintiff	No later than 205 days following the date of the entry of the Preliminary Approval Order
Final Approval Hearing	<p>SEPTEMBER 3, 2025</p> <p>Will be held on _____ at, <u>9:00</u> a.m./p.m. at the Butler County Courthouse, Courtroom <u>3</u>, located at 124 W Diamond St, Butler, PA 16001.</p> <p>[no earlier than 235 days from the Court's entry of the Preliminary Approval Order]</p>

DONE AND ORDERED, this 13TH day of NOVEMBER, 2024.


Honorable S. Michael Yeager



DIANA HEUSER

VS.

NEXTIER BANK, N.A.

IN THE COURT OF COMMON PLEAS
OF BUTLER COUNTY, PA
CIVIL DIVISION
50TH JUDICIAL DISTRICT

CASE NUMBER
AD-2023-10076

CERTIFICATION

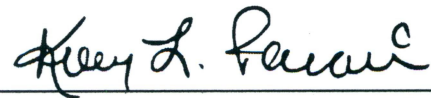
I hereby certify:

RULE 236 NOTICE THE PROTHONOTARY OF BUTLER COUNTY, PENNSYLVANIA HEREBY CERTIFIES THAT A COPY OF THE FOREGOING ORDER WAS MAILED TO: KOPELOWITZ OSTROW P.A.; KALIELGOLD PLLC; JOHNSON FIRM; BLANK ROME LLP; LUTZ, PAWK & BLACK ON 11/19/24, BY FIRST CLASS MAIL, POSTAGE PREPAID.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal of the Said Court, this November 19, 2024.

Attorney for the Plaintiff

KOPELOWITZ OSTROW P.A.
65 OVERHILL ROAD
BALA CYNWYD, PA 19004



Kelly Ferrari
Butler County Prothonotary

Attorney for the Defendant

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