

SETTLEMENT AGREEMENT AND RELEASE

Heuser v. NexTier Bank, N.A.

Court of Common Pleas of Butler County, Pennsylvania

Case No. AD-2023-10076

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (the “Agreement”), dated as of November __, 2023, is entered into by and among Plaintiff Diana Heuser, an adult individual residing in Templeton, Pennsylvania 16259 (“Named Plaintiff”), individually and on behalf of the Settlement Class Members (as defined below), on the one hand, and Defendant NexTier Bank, N.A. (“Defendant”), a national bank with its principal executive offices located at 101 East Diamond Street, Butler, Pennsylvania 16001, on the other hand. All references in this Agreement to a “party” or the “parties” shall refer to a party or the parties to this Agreement.

RECITALS

A. On February 1, 2023, Plaintiff filed a putative class action complaint in the Court of Common Pleas of Butler County, Pennsylvania (the “Complaint”), captioned as *Diana Heuser, et al. v. NexTier Bank, N.A.* and docketed as Case No. AD-2023-10076 (the “Lawsuit”). Plaintiff asserted claims for breach of contract, including breach of the covenant of good faith and fair dealing, unjust enrichment and violation of the Pennsylvania Unfair Trade Practices and Consumer Protection Law, 73 P.S. §§ 201-1 through 201-9.2, regarding Defendant’s alleged assessment or disclosure of: (1) multiple NSF fees on the alleged same item; (2) overdraft fees on authorized on positive or sufficient funds and settled on negative funds transactions (“APSN transactions”); and (3) foreign transaction fees on transactions made while the customer was located in the United States of America (“United States”).

B. On April 10, 2023, Defendant filed Preliminary Objections seeking the dismissal of Plaintiff’s Complaint in its entirety with prejudice for failure to state any claim upon which relief may be granted (the “Preliminary Objections”).

C. On June 29, 2023, the Parties stipulated to the Plaintiff’s discontinuance of all claims in the Complaint related to or arising out of APSN transactions, without prejudice, based on Defendant’s Affidavit confirming that Defendant’s core banking systems have been set up since 2014 so that overdraft and NSF fees were not assessed in connection with APSN transactions to any of its customers, including Plaintiff.

D. During the pendency of the Preliminary Objections and in the interest of resolving disputes, Defendant voluntarily provided Plaintiff’s counsel with information, among other things, relating to the total amounts of overdraft and NSF fees charged by Defendant on consumer and business deposit accounts annually from January 1, 2017 through December 31, 2022, inclusive, and the total amount of foreign transaction fees charged by Defendant annually for the same period of time.

E. Defendant is entering into this Agreement to resolve any and all controversies and disputes arising out of or relating to the allegations made in the Complaint regarding Retry NSF Fees, and to avoid the burden, risk, uncertainty, expense, and disruption to its business operations associated with further litigation. Defendant does not in any way acknowledge, admit to or concede any of the allegations made in the Complaint, and expressly disclaims and denies any fault or liability, or any charges of wrongdoing that have been or could have been asserted in the

Complaint. Nothing contained in this Agreement shall be used or construed as an admission of liability, and this Agreement shall not be offered or received in evidence in any action or proceeding in any court or other forum as an admission or concession of liability or wrongdoing of any nature or for any other purpose other than to enforce the terms of this Agreement.

F. On February 16, 2024, Defendant merged with Mars Bancorp, Inc. ("Mars") including its wholly-owned subsidiary, Mars Bank. Nothing in this Agreement shall be used or construed as resolving claims of accountholders who were customers of Mars Bank on February 16, 2024.

G. Named Plaintiff, on behalf of all Settled Class Members (as defined below), has entered into this Agreement to liquidate and recover on the claims asserted in the Complaint, and to avoid the risk, delay, and uncertainty of continued litigation. Named Plaintiff does not in any way concede the claims alleged in the Complaint lack merit or are subject to any defenses.

H. Named Plaintiff intends to discontinue with prejudice her individual claim and any alleged class claims without prejudice arising from any alleged foreign transaction fees on transactions made while she was located in the United States.

NOW, THEREFORE, in light of the foregoing Recitals and in consideration of the mutual promises and covenants set forth below in this Agreement, for good and valuable consideration the adequacy and receipt of which is mutually acknowledged Plaintiff, individually and on behalf of the Settlement Class, and Defendant intending to be legally bound agree to settle, compromise and release the Settled Claims (as defined below) as follows, subject to preliminary and final Court approval:

1. **DEFINITIONS**. In addition to the terms defined at various points in this Agreement, the following Defined Terms apply throughout this Agreement and the attached exhibits:

(a) "Bar Date to Object" shall be the date set by the Court as the deadline for Class Members to file an Objection, and shall be thirty (30) days after the date the Notice (defined below) must be delivered to the Class Members.

(b) "Bar Date to Opt Out" shall be the date set by the Court as the deadline for Class Members to opt out. The Bar Date to Opt Out shall be thirty (30) days after the date the Notice (defined below) must be delivered to the Class Members.

(c) "Settlement Administrator" means the qualified third-party administrator and agent agreed to by the parties and approved and appointed by the Court in the Preliminary Approval Order to administer this Agreement, including providing the Class Notice. The parties agree to recommend that the Court approve and appoint Epiq Class Action and Claims Solutions, Inc. as the notice provider and qualified administrator.

(d) "Class Counsel" shall mean Jeffrey D. Kaliel and Sophia G. Gold of KalielGold PLLC, Christopher Jennings and Tyler Ewigleben of Johnson Firm, and Kenneth J. Grunfeld of Kopelowitz Ostrow.

(e) "Class Member" or "Settlement Class Member" shall mean the members of the Settlement Class who did not timely and validly opt out or exclude themselves from the Settlement Class.

(f) "Class Notice" means the notice of this Agreement and Final Approval Hearing, which is to be sent to the Settlement Class substantially in the manner set forth in this Agreement and approved by the Court, consistent with the requirements of Due Process and the Rules of Pennsylvania Civil Procedure and substantially in the form of **Exhibit 1** (Postcard Notice) and **Exhibit 2** (Long Form Notice), attached to and incorporated into this Agreement.

(g) "Class Period" means the period beginning January 1, 2017 and ending December 31, 2022, inclusive.

(h) "Court" shall mean the Court of Common Pleas of Butler County, Pennsylvania.

(i) "Defendant's Counsel" shall mean Roy W. Arnold and Thomas P. Cialino of Blank Rome LLP and Michael Pawk of Lutz Pawk & Black.

(j) "Effective Date" shall be thirty (30) days after the entry of the Final Approval Order (defined below) provided no objections are made to this Agreement. If there are objections to the Agreement, then the Effective Date shall be the later of: (1) thirty (30) days after entry of the Final Approval Order if no appeals are taken from the Final Approval Order; or (2) if appeals are taken from the Final Approval Order, then thirty (30) days after a ruling from the highest Appellate Court to which an appeal has been taken affirming the Final Approval Order; or (3) thirty (30) days after entry of a dismissal of the appeal.

(k) "Exclusion Letter" shall mean a letter by a Class Member who elects to opt out of this Agreement.

(l) "Final Approval Hearing Date" shall be the date set by the Court for the hearing on any and all motions for final approval of this Agreement.

(m) "Final Approval Order and Judgment" shall mean the final order and judgment in which the Court gives final approval to the Agreement and dismisses with prejudice Named Plaintiff's and Settlement Class Members' claims and enters judgment according to the terms of this Agreement on or after the Final Approval Hearing Date.

(n) "Final Report" shall mean the report prepared by the Settlement Administrator of all receipts and disbursements from the Settlement Fund, as described in Section 7, below.

(o) "Long Form Notice" means the form of notice that shall be posted on the settlement website (attached as **Exhibit 2**) created by the Settlement Administrator and shall be available to Class Members by mail on request made to the Settlement Administrator.

(p) "Motion for Final Approval" shall mean the motion or motions filed by Class Counsel, as referenced in Section 5, below.

(q) "Net Settlement Fund" shall mean the net amount of the Settlement Fund after payment of court approved attorneys' fees and costs, any Court-approved service award, the costs of Notice, and any fees paid to the Settlement Administrator.

(r) "Notice" shall mean the notice to Class Members of the settlement provided for under the terms of this Agreement, as ordered by the Court in its Preliminary Approval Order (defined below) and shall refer to Postcard Notice attached hereto as *Exhibit 1* and the Long Form Notice attached hereto as *Exhibit 2*.

(s) "Notice Program" means the plan for sending Notice to Class Members, as set forth in Section 4, below.

(t) "NSF Fee" means insufficient fund fee.

(u) "OD Fee" means overdraft fee.

(v) "Person" means a natural person, firm, association, organization, partnership, business, trust, limited liability company, corporation, or public entity.

(w) "Postcard Notice" shall mean a short form of the notice (attached as *Exhibit 1*) that shall be sent by mail to Class Members.

(x) "Preliminary Approval Order" shall mean the Order issued by the Court preliminarily approving this Agreement and authorizing the sending of the Notice to Class Members, as provided in Sections 3 and 4, below.

(y) "Retry NSF Fee(s)" shall mean an NSF Fee and/or OD Fee assessed or charged by Defendant in connection with a check or ACH payment item drawn on a checking account that (a) was resubmitted by a merchant or the merchant's bank with a "RETRY PYMT" indicator after the initial request for payment was declined because the customer's account had an insufficient available balance within the prior 10 calendar days or (b) was preceded by another returned check or ACH entry submitted by the same merchant or merchant's bank in the same amount within the prior 10 calendar days.

(z) "Settlement Administration Expenses" means the costs and expenses reasonably and actually incurred in obtaining the services of the Settlement Administrator to facilitate and administer the settlement pursuant to this Agreement, including but not limited to the costs of de-duplicating the Class List provided by Defendant, printing and mailing the Class Notice, calculating settlement payments and/or credits, and mailing settlement checks as appropriate, and related services.

(aa) "Settlement Class" shall mean any Person who is a deposit account customer of Defendant NextTier 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.

(bb) "Settlement Class Member" means any Person who falls within the definition of the Settlement Class

(cc) "Settlement Fund" shall mean the one hundred sixty-five thousand U.S. dollars (\$165,000.00) common cash fund Defendant NexTier Bank, N.A. is obligated to pay into an escrow account established by the Settlement Administrator under the terms of this Agreement upon the Preliminary Approval Order.

2. CONDITIONAL CERTIFICATION OF SETTLEMENT CLASS.

(a) For settlement purposes only, Named Plaintiff will move for certification of the Settlement Class and approval, preliminary and final, of this Agreement. Solely for purposes of avoiding the expense and inconvenience of further litigation, Defendant agrees, subject to the terms and conditions of this Agreement, not to oppose the certification for settlement purposes only of the Settlement Class, pursuant to Rules 1707, 1708, 1709, and 1710 of the Pennsylvania Rules of Civil Procedure.

(b) Defendant shall have the right to terminate this Agreement pursuant to Section 15 if the Court declines to approve this Agreement, or if the Court changes the Settlement Class composition or the terms of this Agreement in a material way not acceptable to Defendant after reasonable consultation with Class Counsel, or if certification of the Settlement Class or approval of this Agreement is reversed, or if certification of the Settlement Class or approval of this Agreement is changed upon appeal or review in any material way not acceptable to Defendant after reasonable consultation with Class Counsel.

(c) If this Agreement is not finally approved by the Court, or this Agreement is terminated, the certification of the Settlement Class will be void, and no doctrine of waiver, estoppel, or preclusion will be asserted in any litigated certification proceedings in the Action. If this Agreement is not finally approved or is terminated, Defendant shall not be precluded from challenging the merits of Plaintiff's claims or class certification in further proceedings in the Lawsuit or in any other action. No agreements made by or entered into by either party in connection with this Agreement may be used by either party, any Settlement Class Member, or any other Person to establish or oppose the merits of Plaintiff's claims or any of the elements of class certification in any litigated certification proceeding in the Lawsuit or any other action.

(d) Plaintiff shall propose and recommend to the Court that a settlement class be certified conditionally, which class shall be comprised of the Class Members. Defendant agrees solely for purposes of the settlement provided for in this Agreement, and the implementation of such settlement, that this Lawsuit shall proceed as a class action; provided, however, that if a Final Approval Order is not issued, then Defendant shall retain all rights to object to maintaining this Lawsuit as a class action. Plaintiff and Class Counsel shall not reference this Agreement in support of any subsequent motion relating to certification of a liability class.

3. PRELIMINARY SETTLEMENT APPROVAL. Upon execution of this Agreement by all parties, Class Counsel shall use reasonable efforts to promptly file a motion seeking a Preliminary Approval Order. The Preliminary Approval Motion and Order shall be in a form agreed upon by Class Counsel and Defendant's Counsel and shall request the following: (i)

preliminary approval of this Agreement as fair, adequate and reasonable, (ii) conditional certification of the Settlement Class for settlement purposes only, (iii) appointment of Class Counsel as counsel to the conditionally certified Settlement Class, (iv) appointment of the Settlement Administrator to administer the settlement as provided for in this Agreement, (v) approve the Notice Program as set forth in this Agreement to be given to the Class Members as provided in Section 4, below, (vi) approve the procedures set forth in this Agreement for persons in the Settlement Class to exclude themselves from the settlement or to object to the settlement, (vii) stay further litigation of the Lawsuit pending Final Approval of the settlement, (viii) prohibit and preliminarily enjoin Named Plaintiff, all Settlement Class Members (except for those who timely and validly request exclusion or opt out) and Class Counsel from commencing, prosecuting, or assisting in any lawsuit against the Released Parties (as defined below) that asserts or purports to assert any allegations, claims or matters within the scope of the release provided for in this Agreement during the time between entry of the Preliminary Approval Order and final determination by the Court regarding whether to finally approve the settlement, and (ix) schedule a final approval hearing for a time and date mutually convenient for the Court, Class Counsel and Defendant's Counsel, at which the Court will assess the fairness, reasonableness, and adequacy of this Agreement and determine whether to approve this Agreement and Plaintiff's Counsel's application for attorneys' fees and expenses and any service award for to Plaintiff (the "Final Approval Hearing").

4. SETTLEMENT ADMINISTRATION INCLUDING NOTICE TO THE CLASS MEMBERS.

(a) The Settlement Administrator shall administer various aspects of this Agreement, including sending the Notice to all Class Members as specified by the Court in the Preliminary Approval Order and as set forth in the Notice Program established by this Agreement, and distributing the Settlement Fund as provided in this Agreement. The duties of the Settlement Administrator also shall include: (i) use of the Settlement Class list in connection with the Notice Program approved by the Court, for the purpose of sending Notice and mailing distribution checks to any Class Members where is not feasible or reasonable for Defendant to make the payment by a credit to the Settlement Class Members' accounts; (ii) establish and maintain a post office box for requests to opt out from the Settlement Class; (iii) establish and maintain the Settlement Website (as defined below); (iv) establish and maintain an automated toll-free telephone line for Class Members to call with settlement-related inquiries and answer the frequently asked questions of the Settlement Class who call or otherwise communicate such inquiries; (iv) respond to any mailed Settlement Class inquiries; (v) provide weekly reports to Class Counsel and Defendant's Counsel that summarize the number of opt-out requests received that week, the total number of opt-out requests received to date, and other pertinent information; (vi) in advance of the Final Approval Hearing, prepare a declaration to submit to the Court confirming the Notice Program was completed, describing how the Notice Program was completed, providing the names of each person who timely and properly opted out of the Settlement Class, and other information as may be necessary to allow the parties to seek and obtain final approval of this Agreement; (vii) provide to Defendant's Counsel the amount of the payments from the Settlement Fund to Settlement Class Members who are current accountholders and work with Defendant's Counsel to initiate the credits for payments to these Settlement Class Members; (viii) distribute payments by check to Settlement Class Members who are former or past accountholders; (ix) pay invoices, expenses, and costs upon approval by Class Counsel and Defendant's Counsel, as provided in this Agreement; and (x) any

other settlement-related administration function at the instruction of Class Counsel and Defendant's Counsel, including but not limited to, verifying that the Settlement Fund has been distributed by affidavit or declaration, as requested.

(b) The Postcard Notice shall be mailed to Class Members by first class United States mail to the best available mailing addresses. Defendant shall provide the Settlement Administrator with last known mailing addresses for Class Members. The Settlement Administrator will run the names and addresses through the National Change of Address Registry and update as appropriate. If a mailed Postcard Notice is returned with forwarding address information, the Settlement Administrator shall re-mail the Postcard Notice to the forwarding address. For all mailed Postcard Notices that are returned as undeliverable, the Settlement Administrator shall use standard skip tracing devices to obtain forwarding address information and, if the skip tracing yields a different forwarding address, the Settlement Administrator shall re-mail the Postcard Notice to the address identified in the skip trace, as soon as reasonably practicable after the receipt of the returned mail.

(c) A Long Form Notice shall be posted on a settlement website created by the Settlement Administrator (the "Settlement Website").

(d) The Settlement Administrator shall maintain a database showing mail addresses to which each Notice was sent and any Notices that were not delivered. The Settlement Administrator shall provide the parties with a weekly report of the Notice. A summary report of the Notice shall be provided to the parties at least five (5) days prior to the deadline to file the Motion for Final Approval. The database maintained by the Settlement Administrator regarding the Notice shall be available to the parties and the Court upon request, provided however, that any customer contact information shall only be available to Class Counsel upon an order from the Court. The database shall otherwise be confidential and shall not be disclosed to any third party. To the extent the database is provided to Class Counsel, it shall be used only for purposes of implementing the terms of this Agreement, and shall not be used for any other purposes.

(e) The Notice shall be in a form approved by the Court and, substantially similar to the notice forms attached hereto as *Exhibits 1* and *2*. The parties may by mutual written consent make non-substantive changes to the Notice without Court approval.

(f) Notices, including any website, provided under or as a part of the Notice Program shall not bear or include the Defendant's logos or trademarks, its return address, or Defendant's colors, or otherwise be styled so as to appear to originate from Defendant. Settlement Administrator

5. MOTION FOR FINAL APPROVAL. If Preliminary Approval of this Agreement is entered by the Court, within thirty (30) days after the Bar Date to Opt Out and Bar Date to Object, and provided the conditions in Section 15, below, are satisfied, Class Counsel shall file a Motion for Final Approval of this Agreement so that same can be heard on the Final Approval Hearing Date. Unless the conditions and terms of this Agreement are not met or this Agreement is terminated, Class Counsel and Defendant's Counsel shall support entry of a Final Order and Judgment that: (i) certifies the Settlement Class pursuant to Pennsylvania Rules of Civil Procedure 1707 to 1710 solely for purposes of this Agreement; (ii) approves finally the settlement set forth

in this Agreement and its terms as being a fair, reasonable and adequate settlement as to Settlement Class Members within the meaning of Pennsylvania Rules of Civil Procedure 1714 and directing its consummation according to its terms; (iii) finds that the Class Notice constitutes due, adequate, and sufficient notice of the settlement set forth in this Agreement and of the Final Fairness Hearing and meets the requirements of due process and the Pennsylvania Rules of Civil Procedure 1710 to 1717; (iv) directs that, as to the Released Parties (as defined below), the Lawsuit shall be dismissed with prejudice and, except as provided for in this Agreement, without an award of attorneys' fees or costs; (v) orders that the Releasing Parties(as defined below) are permanently enjoined and barred from instituting, commencing, or prosecuting any action or other proceeding asserting any Released Claims (as defined below)against any Released Party; (vi) discontinues with prejudice any remaining individual claim(s) of the Named Plaintiff; (vii) retains with the Court exclusive jurisdiction over this Agreement, including the administration and consummation of the settlement provided for in this Agreement; and (viii) enters or directs the entry of the Final Approval Order and Judgment forthwith.

6. ENTRY OF JUDGMENT. If Preliminary Approval is entered and after the Final Fairness Hearing the Court grants Final Approval, the Final Approval Order and Judgment shall constitute the Court's final judgment in this Lawsuit and shall be framed by the Court and specify or describe the parties who are bound by its terms in accordance with Pennsylvania Rule of Civil Procedure 1715(d). The Court shall retain jurisdiction to enforce the terms of the Final Approval Order and Judgment.

7. THE SETTLEMENT FUND AND DISTRIBUTION.

(a) Payments to Class Members. Subject to approval by the Court, within twenty (20) days after entry of the Preliminary Approval Order, Defendant shall transfer the Settlement Fund to the Settlement Administrator. The Settlement Fund shall be used to pay: (1) any and all attorneys' fees and costs awarded by the Court; (2) any service payment awarded to the Named Plaintiff; and (3) any and all distributions to Settlement Class Members. Defendant shall not be required to make or be responsible to pay any additional or further monies or contributions to the Settlement Fund, the Named Plaintiff, the Settlement Class Members or Class Counsel under any circumstances.

(b) In the event a Final Approval Order is not issued, or this Agreement is terminated by either party for any reason, including pursuant to Section 14, below, the portion of the Settlement Fund paid to the Settlement Administrator (including accrued interest, if any) shall be refunded to Defendant within two (2) business days. Defendant shall separately pay the expenses actually incurred by the Settlement Administrator or due and owing to the Settlement Administrator in connection with the Settlement provided for herein.

(c) All funds held by the Settlement Administrator in an Escrow Account shall be deemed and considered to be in *custodia legis* of the Court, and shall remain subject to the jurisdiction of the Court, until distributed pursuant to this Agreement.

(d) All funds held by the Settlement Administrator in the Escrow Account at any time shall be deemed to be a Qualified Settlement Fund as described in Treasury Regulation §1.468B-1, 26 C.F.R. §1.468B-1. All taxes (including any estimated taxes, and any interest or

penalties relating to them) arising with respect to the income earned by the Escrow Account or otherwise, including any taxes or tax detriments that may be imposed upon Defendant, Defendant's Counsel, Plaintiff and/or Class Counsel with respect to income earned by the Escrow Account, for any period during which the Escrow Account does not qualify as a "qualified settlement fund" for the purpose of federal or state income taxes or otherwise, shall be paid out of the Escrow Account. Defendant and Defendant's Counsel and Plaintiff and Class Counsel shall have no liability or responsibility for any of the taxes. The Escrow Account shall indemnify and hold Defendant and Defendant's Counsel and Plaintiff and Class Counsel harmless for all taxes (including, without limitation, taxes payable by reason of any such indemnification).

(c) Payments shall be made from the Settlement Fund as follows:

(i) Class Counsel's Fees and Costs. Class Counsel's reasonable attorneys' fees and costs, as determined and approved by the Court, shall be paid from the Settlement Fund by the Settlement Administrator within ten (10) days after the Effective Date. Class Counsel shall apply for an award of attorneys' fees of up to one-third of the Settlement Fund, plus reimbursement of reasonable litigation costs, to be approved by the Court. Defendant agrees not to oppose an application for attorneys' fees of up to one-third of the Settlement Fund, but reserves the right to oppose an application for fees in excess of that amount. Any award of attorneys' fees and expenses shall be solely determined by the Court and payable solely from the Settlement Fund. Notwithstanding any other provision of this Agreement, the Court's failure to approve, in whole or in part, any award of attorneys' fees or expenses to Class Counsel shall not prevent the Agreement from becoming effective, nor shall it be grounds for termination of the Agreement. In the event the Court declines to approve any request for attorneys' fees or expenses, in whole or in part, the payment of attorneys' fees and expenses to Class Counsel in the amount sought by Class Counsel, or at all, the remaining provisions of this Agreement shall remain binding and in full force and effect.

(ii) Service Award. Class Counsel may apply to the Court for a service award to the Named Plaintiff of up to \$2,500. Subject to the Court's approval, the service award shall be paid from the Settlement Fund within ten (10) days after the Effective Date.

(iii) Payments to Class Members. Payments from the "Net Settlement Fund" to the Class Members shall be calculated by the Settlement Administrator based on information provided by Defendant following entry of the Final Approval Order, including whether each Class Member's account that was charged a Retry NSF Fee is still active, as follows:

(1) Members of the Settlement Class shall be paid per incurred Retry NSF Fee calculated as follows:

$$\frac{(\text{Net Settlement Fund} / \text{Total Retry NSF Fees of participating Settlement Class Members}) \times (\text{Total Retry NSF Fees of individual participating Settlement Class Member})}{\text{Individual Payment}}.$$

- (2) Payments to individual class members ("Individual Payments") shall be made no later than thirty (30) days after the Effective Date, as follows:

For those Class Members whose account that was charged a Retry NSF Fee is still active at the time of the distribution of the Net Settlement Fund, a credit in the amount of the Individual Payment they are entitled to receive shall be applied to that account. If that account is no longer active, then a credit may be made to any checking or savings account they are then maintaining at Defendant that is held by them individually. No later than 15 (fifteen) days after the Effective Date, the Settlement Administrator shall provide Defendant with funds from the Settlement Fund and information on the amount of account credits to individual Settlement Class Member accounts to make all account credits to current customers. In the event that a Settlement Class Member's account that was charged a Retry NSF Fee becomes inactive between the time when the information referenced in 7(d)(iv) above is provided by Defendant and the account credit is attempted and there is not an alternative account for Defendant to credit with the payment, Defendant shall return the settlement payment amount for that individual Class Member to the Settlement Administrator, which will then send the payment by check to the Class Member.

- (3) For those Class Members who are not current customers of Defendant at the time of the distribution of the Net Settlement Fund or at that time do not have an individual account, they shall be sent a check by the Settlement Administrator at the address used to provide the Notice, or at such other address as designated by the Class Member. The Class Member shall have one-hundred eighty (180) days to negotiate the check. Any checks uncashed after one-hundred eighty (180) days shall be distributed pursuant to Section 10.

(iv) After a Final Approval Order is entered and individual payment are made to Settlement Class Members, in no event shall any portion of the Settlement Fund revert to Defendant.

(v) The Settlement Administrator shall provide the parties with a monthly report setting forth the total payments issued to Class Members by the Settlement Administrator and the total amount of any checks uncashed and/or returned.

8. **CLASS LIST.** Defendant shall bear any expense associated with preparing the list of Class Members, separate from the Settlement Fund.

9. **FINAL REPORT TO THE COURT.** Within two hundred (200) days after the Effective Date (or such other date set by the Court), Class Counsel shall submit to the Court a Final Report, setting forth: (a) the amounts paid to Class Members by the Settlement Administrator, (b) any checks not cashed or returned; (c) the efforts undertaken to follow up on uncashed and/or returned checks; (d) the total amount of money unpaid to Class Members; and (e) the total amount of credits issued to Class Members by Defendant. Defendant shall provide a declaration under penalty of perjury setting forth the amount of the credits issued to Class Members. Class Counsel shall be entitled to verify credits by confidential review of a reasonable sample of Class Member account statements, to be reasonably redacted and appropriately anonymized in order to maintain the confidentiality of customer personal information.

10. **THE SETTLEMENT ADMINISTRATOR.**

(a) **Payments to Settlement Administrator.** Defendant shall pay, separate from the Settlement Fund, (1) costs associated with administering the Notice in accordance with Section 4, above; and (2) any fees paid to the Settlement Administrator for services rendered in connection with the administration process. The Settlement Administrator's fees and costs, including estimated fees and costs to fully implement the terms of this Agreement and all related costs of Notice, as approved by the Court, shall be paid by Defendant from funds separate from the Settlement Fund within 30 days of receipt of any invoice from the Settlement Administrator.

(b) The Settlement Administrator shall execute a retainer agreement that shall provide that, among other things, the Settlement Administrator shall be bound by and shall perform the obligations imposed on it under the terms of this Agreement. The retainer agreement shall include provisions requiring that all Class Member data shall be strictly confidential and secured by the Settlement Administrator by means of data security measures that meet the requirements of the Gramm-Leach-Bliley Act, and all regulations thereunder, and any other applicable laws, and shall not be disclosed other than as provided for under the terms of this Agreement or as ordered by the Court.

(c) The Settlement Administrator shall agree to be subject to the jurisdiction of the Court with respect to the administration of this Agreement.

(d) The Settlement Administrator shall keep all information regarding Class Members confidential except as otherwise provided herein and shall not disclose any Class Member information except as necessary to administer this Settlement in this Action.

(e) The Settlement Administrator also shall be responsible for timely and properly filing all tax returns necessary or advisable, if any, with respect to the Settlement Fund. Except as provided herein, Class Members shall be responsible for their own tax reporting of payments or credits received under the terms of this Agreement. Under no circumstances shall Defendant be responsible for any tax consequences relating to this Agreement, including but not limited to tax payments owed relating to Settlement Fund or individual Class Member payments.

(f) The Settlement Administrator shall provide the data in its claims administration database to Defendant's Counsel and/or Class Counsel in response to any written request, including an email request, related to the administration of this Settlement only. The written request shall be copied to the other party when made. When given to Class Counsel, such information shall exclude any customer contact information and be used only and exclusively for purposes of the administration and implementation of this Agreement.

(g) Within one hundred ninety (190) days after the Effective Date or such other date as required by the Court, the Settlement Administrator shall prepare a declaration setting forth the total payments issued to Class Members by the Settlement Administrator, the total amount of any checks uncashed and/or returned, and the total amount of money being held by the Settlement Administrator.

11. CY PRES PAYMENT. Subject to Court approval, within thirty (30) days after the Final Report, the total amount of uncashed checks, and residual amounts held by the Settlement Administrator at the time of the Final Report, shall be distributed by the Settlement Administrator to the Pennsylvania Interest on Lawyers Trust Account Board in accordance with Pennsylvania Rule of Civil Procedure 1716.

12. OPT-OUTS.

(a) A Class Member who wishes to exclude himself, herself or itself from this Agreement, and from the release of claims and defenses provided for under the terms of this Agreement, shall submit an Exclusion Letter by mail to the Settlement Administrator. For an Exclusion Letter to be valid, it must be postmarked on or before the Bar Date to Opt Out. Any Exclusion Letter shall identify the Class Member, state that the Class Member wishes to exclude himself or herself from the Agreement, and shall be signed and dated.

(b) The Settlement Administrator shall maintain a list of persons who have excluded themselves and shall provide such list to Defendant's Counsel and Class Counsel at least fourteen (14) days prior to the date Class Counsel is required to file the Motion for Final Approval. The Settlement Administrator shall retain the originals of all Exclusion Letters (including the envelopes with the postmarks). The Settlement Administrator shall make the original Exclusion Letters available to Class Counsel, Defendant's Counsel and/or the Court upon two (2) business days' written notice.

13. OBJECTIONS.

(a) Any Class Member, other than a Class Member who timely submits an Exclusion Letter, may object to this Agreement.

(b) To be valid and considered by the Court, the objection must be in writing and sent by first class mail, postage pre-paid, to the Settlement Administrator. The objection must be postmarked on or before the Bar Date to Object, and must include the following information:

(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.

(c) Class Counsel shall file any objections and responsive pleadings at least fourteen (14) days prior to the Final Approval Hearing Date.

14. GENERAL RELEASE.

(a) As of the Effective Date, except as to any right to enforce the terms of this Agreement, Named Plaintiff, and each Settlement Class Member, each on behalf of himself or herself and on behalf of his or her respective heirs, assigns, beneficiaries, and successors (the "Releasing Parties"), hereby fully and forever releases, discharges, and shall be deemed automatically to have fully and irrevocably released and forever discharged Defendant NexTier Bank, N.A., and all of its past, present and future predecessors, successors, parent companies, subsidiaries, divisions, employees, affiliates, assigns, officers, directors, shareholders, representatives, attorneys, insurers and agents (collectively, the "Released Parties") of and from any and all losses, fees, charges, complaints, claims, debts, liabilities, demands, rights, obligations, costs, expenses, attorney's fees, actions, and causes of action of every nature, character, and description, whether known or unknown, asserted or unasserted, existing or potential, liquidated or unliquidated, suspected or unsuspected, fixed or contingent, legal, statutory or equitable, based on contract, tort or any other theory, which Named Plaintiff and the Class Members now have, own or hold against any of the Released Parties that arise out of and/or relate to the assessment, charging, payment, collection, disclosure, or non-disclosure of any Retry NSF Fee during the Class Period alleged in the Complaint or in the Lawsuit or that could have been alleged in the Complaint or in the Lawsuit (the "Released Claims"). Nothing in this Release shall affect any Settlement Class Member's ability to challenge or defend against payment of a Retry NSF Fee in an action brought by the Bank to collect a Retry NSF Fee.

(b) Plaintiff or any Settlement Class Member may hereafter discover facts other than or different from those that he, she or it knows or believes to be true with respect to the subject matter of the Released Claims, or the law applicable to such claims may change. Nonetheless, each of those Persons expressly agrees that, as of the Effective Date, he, she or it shall have automatically and irrevocably waived and fully, finally, and forever settled and released any known or unknown, suspected or unsuspected, asserted or unasserted, liquidated or unliquidated, and contingent or non-contingent claims with respect to all of the matters described in or subsumed by this Agreement. Further, each of those Persons agree and acknowledge that he, she or it shall be bound by this Agreement, including by the release herein and that all of their claims in the Lawsuit shall be released, whether or not such claims are concealed or hidden; without regard to subsequent discovery of different or additional facts or any subsequent change in the law; and if he, she or it does not receive actual notice of this Agreement and/or does not receive a distribution

of funds or credits from this Agreement due to an inadequate or invalid mailing address or otherwise.

(c) In addition to the releases made by Named Plaintiff and Settlement Class Members in Section 14(a) and 14(b), Named Plaintiff for herself, her joint account holder(s), agents, representatives, attorneys, heirs, assigns, or any other person acting on her behalf or for her benefit, any person claiming through her, hereby forever releases, relinquishes and discharges the Released Parties from any and all losses, fees, charges, complaints, claims, debts, liabilities, demands, rights, obligations, costs, expenses, attorney's fees, actions, and causes of action of every nature, character, and description, whether known or unknown, asserted or unasserted, existing or potential, liquidated or unliquidated, suspected or unsuspected, fixed or contingent, legal, statutory or equitable, based on contract, tort or any other theory, which Named Plaintiff now has, owns or holds against any of the Released Parties, including but not limited to any claim allegedly arising from or related to any foreign transaction fees on any debit card transactions made while located in the United States (together with the Released Claims, the "Settled Claims").

(d) Nothing in this Agreement shall operate or be construed to release any claims or rights NexTier Bank, N.A., has to recover any past, present or future amounts that may be owed by Named Plaintiff or by any Settlement Class Member on his, her or its accounts, loans, or any other debts by NexTier Bank, N.A., pursuant to the terms and conditions of such accounts, loans, or any other debts.

(e) Nothing in this Agreement shall operate or be construed to release any claims or rights of Persons who were accountholders at Mars Bank on February 16, 2024.

15. CONDITIONS TO SETTLEMENT.

(a) This Agreement shall be subject to and is expressly conditioned on the occurrence of all of the following events:

(i) The Court has entered the Preliminary Approval Order, as required by Section 3 above;

(ii) The Court has entered the Final Approval Order and Judgment as required by Sections 5 and 6 above, and all objections, if any, to such Order are overruled, and all appeals taken from such Order are resolved in favor of approval; and

(iii) The Effective Date has occurred.

(b) If all of the conditions specified in this Section 15(a) are not met, then this Agreement shall be cancelled and terminated.

(c) Defendant shall have the option to terminate this Agreement if five percent (5%) or more of the Class Members opt out. Defendant shall notify Class Counsel and the Court of its intent to terminate this Agreement pursuant to this Section 15 within ten (10) business days after the Bar Date to Opt Out, or the option to terminate shall be considered waived.

(d) In the event this Agreement is terminated, pursuant to Section 15(c) immediately above, or fails to become effective in accordance with Sections 15(a) and/or (b) immediately above, then the parties shall be restored to their respective positions in this Lawsuit as they existed as of the date of the execution of this Agreement. In such event, the terms and provisions of this Agreement shall have no further force and effect with respect to the parties and shall not be used in this Lawsuit or in any other action or proceeding for any other purpose, and any order entered by this Court in accordance with the terms of this Agreement shall be treated as vacated, *nunc pro tunc*.

16. REPRESENTATIONS.

(a) The parties to this Agreement represent that they have each read this Agreement and are fully aware of and understand all of its terms and the legal consequences thereof. The parties represent that they have consulted or have had the opportunity to consult with and have received or have had the opportunity to receive advice from legal counsel in connection with their review and execution of this Agreement. Neither the Named Plaintiff nor the Defendant shall be considered the drafter of this Agreement or any of its provisions for the purpose of any statute, case law or rule of interpretation or construction that would or might cause any provision to be construed against the drafter of this Agreement.

(b) The parties have not relied on any representations, promises, or agreements other than those expressly set forth in this Agreement.

(c) The Named Plaintiff, on behalf of the Class Members, represents that she has made such inquiry into the terms and conditions of this Agreement as she deems appropriate, and that by executing this Agreement, she, based on Class Counsel's advice, and her understanding of the case, believes the Agreement and all the terms and conditions set forth herein, are fair and reasonable to all Class Members.

(d) The Named Plaintiff represents that she has no knowledge of conflicts or other personal interests that would in any way impact her representation of the class in connection with the execution of this Agreement.

(e) Defendant represents and warrants that it has obtained all corporate authority necessary to execute this Agreement.

17. FURTHER ASSURANCES. Until and unless this Agreement is terminated or becomes null and void by its terms, or unless otherwise ordered by the Court, each of the parties hereto agrees to execute and deliver all such further documents consistent with this Agreement, and to take all appropriate steps consistent with this Agreement and as may be required in order to carry out the provisions of this Agreement, and to use their best efforts to cause the Court to grant Preliminary and Final Approval of this Agreement, and to take or join in such other steps or actions as may be necessary to implement the Agreement and to effectuate the settlement provided for in this Agreement. Additionally, the Parties agree to meet and confer and work in good faith to resolve any disputes that may arise in connection with the Agreement.

18. APPLICABLE LAW. Except to the extent governed by federal law, this Agreement shall be governed by and interpreted, construed, and enforced pursuant to the laws of

the Commonwealth of Pennsylvania, without regard to any choice of law or conflict of law principles.

19. NO ORAL WAIVER OR MODIFICATION. No waiver or modification of any provision of this Agreement or of any breach thereof shall constitute a waiver or modification of any other provision or breach, whether or not similar. Nor shall any actual waiver or modification constitute a continuing waiver. No waiver or modification shall be binding unless executed in writing by the party making the waiver or modification.

20. ENTIRE AGREEMENT. This Agreement, including the exhibit attached hereto, constitutes the entire agreement made by and between the parties pertaining to this Agreement, and fully supersedes any and all prior or contemporaneous understandings, representations, warranties, and agreements made by the parties or their representatives pertaining to this Agreement. No extrinsic evidence whatsoever may be introduced in any judicial proceeding involving the construction or interpretation of this Agreement.

21. BINDING ON SUCCESSORS. This Agreement shall apply to, inure to the benefit of, and bind the parties and their heirs, successors, and assigns.

22. SEVERABILITY. In the event any one or more of the provisions of this Agreement is determined to be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained in this Agreement will not in any way be affected or impaired thereby.

23. COUNTERPARTS AND FACSIMILE SIGNATURES. This Agreement may be executed and delivered in separate counterparts, each of which, when so executed and delivered, shall be an original, but such counterparts together shall constitute but one and the same instrument and agreement. Facsimile and Adobe PDF signature pages shall have the same force and effect as original signatures.

24. NOTIFICATION. Any notice to be given to Class Counsel and/or Named Plaintiff shall be sent by email as follows:

Jeffrey D. Kaliel, Esq
Sophia G. Gold, Esq.
KALIELGOLD PLLC
1100 15th Street NW, 4th Floor
Washington, DC 20005
jkaliel@kalielgold.com
sgold@kalielgold.com

Christopher D. Jennings
Tyler B. Ewigleben
JOHNSON FIRM
610 President Clinton Avenue, Suite 300
Little Rock, Arkansas 72201
Telephone: (501) 372-1300

chris@yourattorney.com
tyler@yourattorney.com

Any notice to be given to Defendant under the terms of this Agreement shall be sent by email as follows:

Michael J. Pawk, Esq.
The NexTier Center Building
101 East Diamond Street, Suite 102
Butler, PA 16001
mikepawk@lutzandpawklaw.com

Roy W. Arnold, Esq.
BLANK ROME LLP
Union Trust Building
501 Grant Street, Suite 850
Pittsburgh, PA 15219
roy.arnold@blankrome.com

Any notice to the Settlement Administrator shall be sent by email to the Settlement Administrator.

25. NON-DISPARAGEMENT. Named Plaintiff, Class Counsel, Defendant and Defendant's Counsel shall not issue, or otherwise cause to be issued, any press release, advertisement, or Internet posting which disparages Named Plaintiff, Class Counsel, Defendant, or Defendant's Counsel with respect to the matters alleged or asserted in the Lawsuit or relating to this Agreement.

26. NO ADMISSION. Nothing contained in this Agreement shall constitute any admission as to any assertion, claim, or allegation made by any party, or as to the scope of any liability. Defendant specifically denies any wrongdoing or liability and specifically denies that any class could or should be certified in the Lawsuit for litigation purposes. This Agreement is entered into solely to resolve the claims amicably, and to avoid the further expense or risk of additional litigation and does not imply or suggest in any way fault or wrongdoing. The parties agree that this Agreement and its Exhibits, and any and all associated negotiations, documents, discussions, shall not be deemed or construed by anyone to be an admission or evidence of any violation of any statute or law, or of any liability or wrongdoing by Defendant. This Agreement shall not be offered and shall not be admissible as evidence in any action or proceeding except (i) the hearings necessary to obtain and implement Court approval of this Settlement; and (ii) any hearing to enforce the terms of the Agreement or related order by the Court. This Agreement, whether or not consummated, any proceedings relating to this Agreement, and any of the terms of this Agreement, whether or not consummated, shall in no event be construed as, or deemed to be evidence of, an admission or concession on the part of Defendant with respect to any fact or matter alleged in the Lawsuit, or any fault or liability or wrongdoing or damage whatsoever, or any infirmity in any defense that has been or could have been asserted.

27. **NO ASSIGNMENTS.** Named Plaintiff and Class Counsel represent, covenant, and warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber any portion of any Settled Claim except as set forth in this Agreement, and that there are no Persons having any interest in any award of attorneys' fees, expenses, or litigation costs in connection with the Lawsuit. Class Counsel agrees to indemnify and hold Defendant harmless as to (a) any breach of the representation and warranty in this Section 27; and (b) any claim by any other Person against Defendant or its Counsel for such an award of attorneys' fees, expenses or litigation costs.

28. **NO FURTHER CLAIMS.** No Person shall have any claim against any of the Released Parties, against Named Plaintiff, against counsel for any Party or the Settlement Administrator based on a distribution of benefits made substantially in accordance with this Agreement or related order(s) of the Court.

IN WITNESS WHEREOF, the parties have entered this Agreement as of the dates set forth below.

[Signature page to follow]

Dated: May __, 2024
5/31/2024

Diana Heuser, an individual on behalf
of herself and the Settlement Class

By: 
Diana Heuser
DocuSigned by:
8E8704A0B1B4465

Dated: May __, 2024
June 4, 2024


NexTier Bank, N.A.

By: 
Its: 

APPROVED AS TO FORM:

Dated: May __, 2024
June 4, 2024

BLANK ROME LLP

By: 
Roy W. Arnold
Attorneys for Defendant
NexTier Bank, N.A.

Dated: May 30, 2024

KALIELGOLD PLLC

By: 
Sophia G. Gold
Attorneys for Named Plaintiff Diana Heuser and
the putative Settlement Class

Dated: May 30, 2024

KOPELOWITZ OSTROW

By: 
Kenneth J. Grunfeld
Attorneys for Named Plaintiff Diana Heuser and
the putative Settlement Class

EXHIBIT 1

DocuSign Envelope ID: C7E9E5E2-9FFD-4583-95B7-62BFEC296422
NexTier Bank
Settlement Administrator
PO Box XXXX
Portland, OR 972XX-XXXX

Court-Approved Legal Notice

If you are a deposit account customer of NexTier Bank, N.A., who resides in Commonwealth of Pennsylvania and were charged any Retry NSF Fee between January 1, 2017, and December 31, 2022, then you may be entitled to a Payment from a class action settlement.

<<MAIL ID>>

<<NAME 1>>

<<NAME 2>>

<<ADDRESS LINE 1>>

<<ADDRESS LINE 2>>

<<ADDRESS LINE 3>>

<<ADDRESS LINE 4>>

<<ADDRESS LINE 5>>

<<CITY, STATE ZIP>>

<<COUNTRY>>

DocuSign Envelope ID: C7E9E5E2-9FFD-4583-95B7-62BFEC296422

A \$100,000 settlement has been reached in a class action lawsuit against NexTier Bank, N.A. (“Defendant”) in a lawsuit claiming a breach of contract regarding Defendant’s alleged assessment or disclosure of multiple NSF fees on the alleged same item. NexTier denies the allegation in the lawsuit and the Court has not decided who is right.

You are Receiving this Notice Because NexTier’s Records Indicate you Likely are a Settlement Class Member.

The Settlement Class includes any person who is or was a deposit account customer of 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 includes both consumer and business customers. The Settlement Class does not include any Person who held a deposit account with Mars Bank on February 16, 2024.

What Does the Settlement Provide? The Settlement provides for Individual Payments based on the number of Retry NSF Fees incurred by each Class Member. You do not need to file a Claim to receive a payment. If the Settlement receives final approval from the Court, you will get your benefit automatically. Current customers will receive an account credit. Former customers will receive a check.

Your Options. If you do *not* want a settlement benefit, and you want to keep the right to sue or continue to sue the Defendant on your own about the legal issues in this lawsuit, you must file a Request for Exclusion **postmarked** by **Month DD, 20YY**. If you do not exclude yourself, you will remain in the Settlement Class and will lose the right to sue the Defendant about the legal issues in this lawsuit and will be bound by the Settlement. If you do not exclude yourself, you may object to the Settlement. The deadline to object is **Month DD, 20YY**.

The Court will hold a Final Approval Hearing on **Month DD, 20YY**, at **x:00 x.m.**, to consider whether to approve the Settlement, attorneys’ fees, costs, and expenses, and Service Award Payments, and hear any objections. You do not need to attend the hearing. If you file an objection that includes a notice of intention to appear, you may attend the hearing, and you may ask to speak, but you do not have to speak. You may hire your own lawyer to attend, at your own expense, but you do not need to do so. After the hearing, the Court will decide whether to approve the Settlement.

More information is available at: **www.xxxxxxxx.com or by calling toll-free 1-XXX.XXX.XXXX**

EXHIBIT 2

Court of Common Pleas of Butler County, Pennsylvania

If you are a deposit account customer of NexTier Bank, N.A., who resides in Commonwealth of Pennsylvania and were charged any Retry NSF Fee between January 1, 2017, and December 31, 2022, then you may be entitled to a Payment from a class action settlement.

A court authorized this notice. This is not a solicitation from a lawyer.

- A settlement has been reached in a class action lawsuit against NexTier Bank, N.A. (“Defendant”) in a lawsuit claiming a breach of contract regarding Defendant’s alleged assessment or disclosure of multiple NSF fees or OD Fees on the alleged same item. Defendant denies it did anything wrong and the Court has not decided who is right.
- The Settlement includes anyone 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, and who does not timely and validly opt out or request exclusion from the Settlement Class. The Settlement Class includes both consumer and business customers. The Settlement Class does not include any Person who held a deposit account with Mars Bank on February 16, 2024.
- If you are member of the Settlement Class, you do not need to do anything to receive your benefit. If the settlement received final approval from the Court, you will get your benefit automatically. Current customers will receive an account credit. Former customers will receive a check.

Please read this Notice fully and carefully; the proposed Settlement affects your legal rights.

SUMMARY OF YOUR OPTIONS AND THE LEGAL EFFECT OF EACH OPTION	
OPT-OUT FROM THE SETTLEMENT; RECEIVE NO PAYMENT BUT RELEASE NO LEGAL CLAIMS	You can choose to opt-out of the Settlement by Month DD, 20YY . You will keep your individual legal claims against Defendant, but you will not receive a payment from the Settlement Fund. If you opt-out of the Settlement but want to recover against Defendant, you will have to file a separate lawsuit.
OBJECT TO THE SETTLEMENT	You can file an objection with the Court by Month DD, 20YY , explaining why you believe the Court should reject the Settlement.
DO NOTHING	If you do nothing, you may be eligible to receive a benefit from the Settlement Fund. If you are eligible and do not exclude yourself from the Settlement, you will receive this benefit automatically. By doing nothing, you will also release your legal claims against Defendant, and you will be bound by the terms of the Settlement.

These rights and options—*and the deadlines to exercise them*—along with the material terms of the Settlement are explained in this Notice

Questions? Call 1-xxx-xxx-xxxx or visit www.xxxxxxxxxx.com

BASIC INFORMATION

1. Why is this Notice being provided?

A court authorized this Notice because you have the right to know about the proposed Settlement of a class action lawsuit and about all of your rights and options before the Court decides whether to grant final approval to the Settlement. This Notice explains the lawsuit, the Settlement, your legal rights, what benefits are available and how to get settlement benefits.

The lawsuit being settled is entitled *Diana Heuser, et al. v. NexTier Bank, N.A.*, Case No. AD-2023-10076. The Lawsuit is pending in the Court of Common Pleas of Butler County, Pennsylvania, Case No. AD-2023-10076. The case is a “class action.” The persons who filed the lawsuits are called the “Plaintiffs” and the company sued, NexTier Bank, N.A. is called the “Defendant.”

2. What is the lawsuit about?

That lawsuit claims a breach of contract regarding Defendant’s alleged assessment or disclosure of: multiple NSF fees or OD Fees on the alleged same item. The Complaint can be read at www.XXXXXXXXXX.com.

Defendant denies the allegations in the lawsuit and is entering into this Agreement to resolve any and all controversies and disputes arising out of or relating to the allegations made in the Complaint regarding Retry NSF Fees, and to avoid the burden, risk, uncertainty, expense, and disruption to its business operations associated with further litigation. The Defendant’s Answer can be found at www.XXXXXXXXXX.com. The Court has not decided who is right.

3. What is a “Retry NSF Fee”?

A Retry NSF Fee is a non-sufficient fund (“NSF”) fee and/or overdraft (“OD”) fee assessed or charged by Defendant in connection with a check or ACH payment item drawn on a checking account that (a) was resubmitted by a merchant or the merchant’s bank with a “RETRY PYMT” indicator after the initial request for payment was declined because the customer’s account had an insufficient available balance within the prior 10 calendar days or (b) was preceded by another returned check or ACH entry submitted by the same merchant or merchant’s bank in the same amount within the prior 10 calendar days.

4. Why is this lawsuit a class action?

In a class action, plaintiffs sue on behalf of all people who have similar claims. In this lawsuit, the Class Representative, Diana Heuser, is acting on behalf of all persons who fit the Class definition decided by the Court. Together, all these people are called a Settlement Class or Settlement Class Members. One court resolves the issues for all Settlement Class Members, except for those Settlement Class Members who timely exclude themselves (opt out) from the Settlement Class.

5. Why did the Parties settle?

The Court has not decided in favor of Plaintiffs or Defendant. Instead, Plaintiffs and Defendant have agreed to settle the lawsuit. Plaintiffs and the lawyers for the Settlement Class (“Class Counsel”)

Questions? Call 1-xxx-xxx-xxxx or visit www.XXXXXXXXXX.com

believe the Settlement is best for all Settlement Class Members because of the benefits of the Settlement and the risks and uncertainty associated with continued litigation.

WHO IS IN THE SETTLEMENT

6. How do I know if I am part of the Settlement?

The Court decided that the Settlement Class includes 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 includes both consumer and business customers. The Settlement Class does not include any Person who held a deposit account with Mars Bank on February 16, 2024.

If you received Notice, then Defendant's records indicate that you are a member of the Settlement Class and are entitled to receive a cash payment from the Settlement Fund.

7. What if I am still not sure whether I am part of the Settlement?

If you are still not sure whether you are a Settlement Class Member, you may go to the Settlement Website at www.xxxxxxxxxx.com or call the Settlement Administrator's Settlement Toll-Free Number at 1-xxx-xxx-xxxx.

THE SETTLEMENT BENEFITS—WHAT YOU GET IF YOU QUALIFY

8. What does the Settlement Provide?

According to the Settlement Agreement, a \$165,000 Settlement Fund will be established for the Settlement and will be used to pay for: (1) Notice and Administrative Expenses; (2) Taxes and Tax-Related Expenses; (3) Service Award Payment approved by the Court; and (4) attorneys' fees, costs, and expenses. The amount remaining after these items are paid or allocated, if any is the "Net Settlement Fund." The Net Settlement Fund will then be used to make an automatic Individual Payment (an account credit or payment by check) to all Settlement Class Members (who do not request exclusion from the Class).

9. How will the amount of account credits and cash payments be determined?

Members of the Settlement Class will be paid per incurred Retry NSF Fee calculated as follows:

$$(\text{Net Settlement Fund} / \text{Total Retry NSF Fees of participating Settlement Class Members}) \times (\text{Total Retry NSF Fees of individual participating Settlement Class Member}) = \text{Individual Payment.}$$

Payments to individual class members ("Individual Payments") will be made as follows:

- For those Class Members who were charged a Retry NSF Fee and still have an active account with NexTier Bank at the time of the distribution of the Net Settlement Fund, a credit in the amount of the Individual Payment they are entitled to receive shall be applied to that account.
- If that account is no longer active, then a credit may be made to any checking or

Questions? Call 1-xxx-xxx-xxxx or visit www.xxxxxxxxxx.com

savings account that Class Member still maintains at NexTier Bank that is held by them individually.

- For those Class Members who are not current customers of NexTier Bank at the time of the distribution of the Net Settlement Fund or at that time do not have an individual account, they will be sent a check by the Settlement Administrator at the address used to provide the Notice, or at such other address as designated by the Class Member.
- In the event that a Settlement Class Member's account that was charged a Retry NSF Fee becomes inactive between the time when the information is provided by NexTier Bank and the account credit is attempted, and there is not an alternative account for NexTier Bank to credit with the payment, NexTier Bank will return the settlement payment amount for that individual Class Member to the Settlement Administrator, which will then send the payment by check to the Class Member.

10. What am I giving up to receive settlement benefits or stay in the Settlement Class?

Unless you exclude yourself (opt out), you are choosing to remain in the Settlement Class. If the Settlement is approved and becomes final, all Court orders will apply to you and legally bind you. You will not be able to sue, continue to sue, or be part of any other action for all Released Claims against the Released Parties (including Defendants) that relates to this lawsuit.

11. What are the Released Claims?

The Settlement Agreement in Section 14 "General Release" describes the Releases, Released Claims, and Released Parties in necessary legal terminology, so please read these sections carefully. The Settlement Agreement is available at www.xxxxxxxx.com or in the public Court records on file in these lawsuits. For questions regarding the Releases or Released Claims and what the language in the Settlement Agreement means, you can also contact one of the lawyers listed in Question 15 of this Notice for free, or you can talk to your own lawyer at your own expense.

HOW TO GET BENEFITS FROM THE SETTLEMENT

12. Do I have to file a claim to receive settlement benefits?

No, if the Settlement is approved, Individual Payments will be made automatically by account credit or check. You do not need to file a claim to receive an Individual Payment.

13. What happens if my contact information changes?

If you change your mailing address or email address, it is your responsibility to inform the Settlement Administrator of your updated information. You may notify the Settlement Administrator of any changes by calling 1-xxx-xxx-xxxx or by writing to:

NexTier Settlement Administrator
PO Box xxxx
Portland, OR 97xxx-xxxx

Questions? Call 1-xxx-xxx-xxxx or visit www.xxxxxxxx.com

14. When will I receive my settlement benefits?

Individual Payments will be provided to Settlement Class Members by account credit or check after the Settlement is approved by the Court and becomes final. It may take time for the Settlement to be approved and become final. Please be patient and check www.xxxxxxxxxxx.com for updates.

THE LAWYERS REPRESENTING YOU

15. Do I have a lawyer in this case?

Yes, the Court has appointed attorneys Jeffrey D. Kaliei and Sophia G. Gold of Kaliei Gold PLLC, Christopher Jennings and Tyler Ewigleben of Johnson Firm, and Kenneth J. Grunfeld of Kopelowitz Ostrow to represent you and the Settlement Class for purposes of this Settlement. You may hire your own lawyer at your own cost and expense if you want someone other than Class Counsel to represent you in this lawsuit.

16. How will Class Counsel be paid?

Class Counsel will apply for an award of attorneys' fees of up to one-third of the Settlement Fund, plus reimbursement of reasonable litigation costs, to be approved by the Court. Defendant agrees not to oppose an application for attorneys' fees of up to one-third of the Settlement Fund, but reserves the right to oppose an application for fees in excess of that amount. Any award of attorneys' fees and expenses shall be solely determined by the Court and payable solely from the Settlement Fund.

Class Counsel may apply to the Court for a service award to the Named Plaintiff of up to \$2,500. Subject to the Court's approval, the service award shall be paid from the Settlement Fund.

OPTING-OUT OF THE SETTLEMENT

If you are a Settlement Class Member and want to keep any right you may have to sue or continue to sue Defendant on your own based on the claims raised in this lawsuit or released by the Released Claims, then you must take steps to get out of the Settlement. This is called excluding yourself from or "opting out" of the Settlement.

17. How do I opt-out of the Settlement?

If you do not want to receive an Individual Payment, and if you want to keep any right you may have to sue Defendant for the legal claims alleged in this lawsuit, you must opt-out of the Settlement.

For an Exclusion Letter to be valid, it must be postmarked on or before **Month DD, 20YY**. Any Exclusion Letter should include your name, state your wishes to exclude yourself from the Settlement, and should be signed and dated.

Your letter can simply say, "I hereby elect to be excluded from the Settlement in the *Heuser v. NexTier Bank, N.A.* class action." Your opt-out request must be **postmarked by Month DD, 20YY**, and sent to the following address:

NexTier Settlement Administrator
Exclusion Request

Questions? Call 1-xxx-xxx-xxxx or visit www.xxxxxxxxxxx.com

P.O. Box xxxx
Portland, OR 97xxx-xxxx

18. What happens if I opt-out of the Settlement?

If you opt-out of the Settlement, you will preserve and not give up any of your rights to sue Defendant for the legal claims alleged in the Action. However, you will not be entitled to receive a payment from the Settlement.

19. If I do not opt out, can I sue the Defendant for the same thing later?

No. Unless you opt out, you give up any right to sue the Defendant for all claims and other matters released in and by the Settlement Agreement. You must opt out to start or continue with your own lawsuit or be part of any other lawsuit against the Defendant regarding the Released Claims. If you have a pending lawsuit, speak to your lawyer in that case immediately.

OBJECTING TO THE SETTLEMENT

20. How do I notify the Court that I do not like the Settlement?

You can object to the Settlement and/or the Application for Approval of Attorneys' Fees, Costs, and Service Awards, if you do *not* opt-out of the Settlement. Members of the Settlement Class who opt-out of the Settlement have no right to object to how Settlement Class Members are treated. The objection must be sent to the Settlement Administrator so that it is received by **Month DD, 20YY**, and must include the following information:

- a) Your name, address, telephone number, the last four digits of your customer number or former customer number, and the contact information for any lawyer retained in connection with the objection or otherwise in connection with this case;
- b) A statement of the factual and legal basis for each objection and any exhibits you wish the Court to consider in connection with the objection; and
- c) A statement as to whether you intend to appear at the Final Approval Hearing, either in person or through your lawyer, and, if through your lawyer, identifying them by name, address, and telephone number.

All objections must be mailed to the Settlement Administrator so they are received by **Month DD, 20YY**, to:

NexTier Objection
P.O. Box xxxx
Portland, OR 97xxx-xxxx

21. What is the difference between objecting and requesting to opt-out of the Settlement?

Objecting is telling the Court that you do not believe the Settlement is fair, reasonable, and adequate for the Settlement Class and asking the Court to reject it. You can object only if you do not opt-out of the Settlement. If you object to the Settlement and do not opt-out, then you may be entitled to an Individual Payment if the Settlement is approved. You will release legal claims you might have against Defendant. Opting-out is telling the Court that you do not want to be part of the Settlement

Questions? Call 1-xxx-xxx-xxxx or visit www.xxxxxxxxxx.com

and do not want to receive an Individual Payment or release legal claims you might have against Defendant for the legal claims alleged in this lawsuit.

THE COURT'S FINAL APPROVAL HEARING

22. When and where will the Court decide whether to approve the Settlement?

The Court will hold a Final Approval Hearing at **XX:00 a/p.m. on Month DD, 20YY**, at the Court of Common Pleas of Butler County, Pennsylvania, which is located at Government Judicial Center, 124 West Diamond Street Butler, PA 16001. At this hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. If there are objections, the Court will consider them. The Court may also decide how much of a Service Award to award the Class Representative and Class Counsel for attorneys' fees and costs. The date, time or location of the hearing could change, so please make sure and check the Settlement Website at www.xxxxxxxxxx.com.

23. Do I have to attend the hearing?

No. Class Counsel will answer any questions the Court may have. You may attend the Hearing at your own expense, but it is not necessary. If you have submitted an objection, you may want to attend.

24. May I speak at the hearing?

If you have objected, you may ask the Court for permission to speak at the Final Approval Hearing. To do so, you must include with your objection, described in Question 20, above, the statement "I hereby give notice that I intend to appear at the Final Approval Hearing."

IF YOU DO NOTHING

25. What happens if I do nothing at all?

If you are a Settlement Class Member and you do nothing, and if the Settlement becomes final, you will receive an Individual Payment by account credit or check. You will also give up rights explained in the "Opting Out from the Settlement" section of this Notice, including your right to start a lawsuit, continue with a lawsuit, or be part of any other lawsuit, etc. against the Defendant regarding the Released Claims in this lawsuit.

GETTING MORE INFORMATION

26. How do I get more information?

This Notice summarizes the Settlement. Complete details are provided in the Settlement Agreement. The Settlement Agreement and other related documents are available at www.xxxxxxxxxx.com, by calling 1-xxx-xxx-xxxx, or by writing to:

NexTier Settlement Administrator
PO Box xxxx
Portland, OR 97xxx-xxxx

**PLEASE DO NOT TELEPHONE THE COURT OR THE COURT'S CLERKS OFFICE
REGARDING THIS NOTICE.**

Questions? Call 1-xxx-xxx-xxxx or visit www.xxxxxxxxxx.com