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5
6 IN THE CIRCUIT COURT OF
7 SHELBY COUNTY, TENNESSEE

8
9 JORDON GONZALES AND § Case No:
10 CHARINDA GONZALES § COMPLAINT
11 Plaintiffs, § PRAYER FOR RELIEF
12 vs. § JURY TRIAL DEMANDED
13 EVOLVE BANK AND TRUST §
14 Defendant §

15
16 SUMMARY

- 17 1. Plaintiffs, Jordon Gonzales and Charinda Gonzales, have been wrongfully denied access
18 to their individual bank deposits that have been deposited through Evolve Bank and Trust
19 (Evolve for short) into a fintech banking model. In addition, multiple transactions
20 (combination of ATM, ACH and debit card swipes) were wrongfully dishonored. Evolve's
21 actions have been nothing short of intentional, malicious, fraudulent, reckless, and utterly
22 reprehensible. Evolve chose to do business in complete disregard of joint Federal Regulator
23 guidance's, failing to act in a safe and sound manner. When the ecosystem failed, Evolve's
24 immediate and intentional actions were made in complete disregard for the Plaintiffs'
25 wellbeing, violating The First Amendment and a host of Tennessee consumer protection
26 laws.
- 27 2. This document details the timeline of events, the legal complaints and the Plaintiffs'
28 prayer for relief.

TIMELINE OF EVENTS

1
2 3. On May 13th, 2022, Mr. Gonzales created an account on a fintech app called Yotta. The
3 signup and onboarding occurred entirely through the mobile platform app, Yotta. While it
4 was a different experience, Yotta was very clear from the start that they are not a bank. Yotta
5 advertised partnerships with FDIC insured banks. At the time Mr. Gonzales opened his
6 account, it was with Evolve Bank and Trust (Evolve for short). Mr. Gonzales received a
7 routing number that belongs to Evolve (verifiable with a simple online search) and a unique
8 account number to use for transaction instructions. Whatever money Mr. Gonzales deposited,
9 went directly to Evolve using that routing number and account number.

10 4. A third company existed in this ecosystem a middleman between Yotta and Evolve. This
11 additional party is known as Synapse Financial Technologies INC. (Synapse for short).
12 Synapse acted as an API (application programming interface) between Yotta and Evolve
13 while also acting as a type of manager of funds.

14 5. After testing out this new banking product / model, Mr. Gonzales attempted to add his
15 wife, Mrs. Gonzales, to his account. Mr. Gonzales learned through Yotta customer support
16 that cosigners were not permitted. As a result, the Plaintiffs opened an entirely new account
17 in Mrs. Gonzales name on May 28th, 2022. All things went well for just shy of two years.

18 6. On October 4th, 2023, an email was sent out to end users that the middleman business,
19 Synapse, was changing the banking model and provided a new agreement which was to go in
20 effect. Evolve's role was changing in this business relationship. Rather than being the bank
21 that holds user demand deposit accounts, Evolve would immediately forward funds into this
22 new model that utilized brokerage accounts located across other banks in the ecosystem.

23 7. However, the overall experience for the Plaintiffs and those similarly situated did not
24 change. The accounts at Evolve were never closed. The Plaintiffs still had the ability to
25 deposit new funds, use their debit cards and continue using ACH transactions and bill
26 payments. From October 4th, 2023, the time the Plaintiffs received the new agreement email,
27 to May 10th, 2024, all regular banking services that the Plaintiffs used normally continued as
28 if nothing had changed.

1 8. To reiterate the business as usual experience of the Plaintiffs, ACH transfers initiated by
2 the Plaintiffs via their secondary bank Security Service Federal Credit Union continued to
3 post successfully while using the original Evolve routing number and the unique account
4 numbers. Bill payments the Plaintiffs made via State Farm, Verizon, Harley, and Kia all used
5 the same routing number and unique account numbers and continued to work as usual. On
6 September 27th, 2023, both Plaintiffs had received their first direct deposits using the same
7 routing number and unique account numbers. This practice continued past the new agreement
8 into May. The debit cards that were initially issued continued to work at both point of sales
9 and ATMs. The debit cards were issued by Evolve Bank and Trust. For 7 months, the
10 Plaintiffs continued as normal, as if nothing had changed.

11 9. The Plaintiffs would learn later, through a court filing by Yotta, that Evolve and Synapse
12 were in a contractual dispute and a financial dispute. None of this information could have
13 been known to the Plaintiffs otherwise.

14 10. As a result of the new contractual agreement and banking model, Evolve has stated that
15 they are not a partner bank under the new agreement and that Evolve is not directly holding
16 end user funds.

17 11. Evolve played the role of being the only source of access the Plaintiffs had with their
18 funds. Evolve may not have been a “partner bank” but it certainly remained and acted as a
19 business partner. The Plaintiffs did not receive any other set of banking instructions, routing
20 numbers, account numbers, or statements from a different set of accounts. The Plaintiffs and
21 all other similarly situated end users continued to use the same debit cards originally issued,
22 the same routing number and unique account numbers for their banking services.

23 12. On May 11th, Mrs. Gonzales was in line to make a purchase and her debit card was
24 declined. Mrs. Gonzales reached out to her husband to make him aware. Mr. Gonzales
25 confirmed that Mrs. Gonzales had funds in her account. Afterwards, Mr. Gonzales concluded
26 it was a glitch with either the merchant’s systems or Mrs. Gonzales’ debit cards. Random
27 outages are not uncommon with technology. Mr. Gonzales assumed it would take care of
28 itself in time. They had not received any communication regarding service disruptions.

1 13. However, the issue did not fix itself. Mr. Gonzales began looking for answers first by
2 reaching out to Yotta. On May 15th, in reply to Mr. Gonzales' inquiry, Yotta replied that
3 Evolve Bank and Trust froze all card payments, and it also made note that ACH's were not
4 working either. To be clear, 4 days later, no communication was provided by Evolve or
5 Yotta. Mr. Gonzales shared this email on social media pages, unaware of who the freeze may
6 be impacting.

7 14. Caught off guard by the note on ACHs, Mrs. Gonzales' direct deposit paycheck rejected.
8 Mrs. Gonzales simply did not have time to submit new direct deposit paperwork.

9 15. There is an existing community on Reddit dedicated to Yotta that Mr. Gonzales was
10 aware of. On May 16th, he began to actively participate in the online conversations. It was
11 only through this online forum that he became aware of information that Yotta and Evolve
12 both had failed to properly communicate: Synapse, was in bankruptcy court.

13
14 INFORMATION LEARNED AS A RESULT
15 OF SYNAPSE BANKRUPTCY HEARINGS

16 16. On or about April 22nd, Synapse filed for bankruptcy. On or about May 11th, Synapse
17 (which is in the process of shutting down) disabled a piece of technology, only known as
18 "The Dashboard." This dashboard was apparently being used by Evolve and other banks for
19 accounting and ledgering purposes. As a result of being cut off from this dashboard, Evolve
20 took actions to disable debit card processing as well as ACH processing. This action was not
21 taken by all of the banks in the ecosystem. Only Evolve suspended transactions by revoking
22 all access and refusing to accept or honor any customer instructions. Evolve's standard reply
23 when the Plaintiffs would contact Evolve's customer support: "Talk to Synapse Brokerage."

24 17. Evolve has made comments and filings in the Synapse bankruptcy case where they claim
25 to have locked users out of their funds "to protect the End Users." It is unclear how
26 withholding / revoking access to critical funds is considered a protection. These funds are
27 integral to the Plaintiffs' daily lives. Revoking access is the exact opposite of protection. It is
28 an intentional, malicious, fraudulent and reckless decision to protect Evolve's interests.

1 18. Communications the Plaintiffs and similarly situated end users received have been
2 contradictory. Evolve continues to claim that they do not have end user funds. However, the
3 trustee report documents at least \$46 million of end user funds exist at Evolve. In addition,
4 the Plaintiffs can produce communications from Yotta which are contrary to Evolve's claim.

5 19. While continuing the narrative of not having end user funds, Evolve hired Ankura
6 Consulting Group, LLC to perform reconciliations that Evolve cannot do on its own. Evolve
7 attorneys stated that Evolve may begin payments to end users only after reconciliation efforts
8 complete. These efforts are estimated to need 8 weeks after receiving the required data.
9 According to Evolve's attorneys, the clock started on August 23rd, 2024, with the 8-week
10 deadline falling on October 18th, 2024. How can they make payments if they don't have our
11 funds?

12 20. Evolve has consistently stated that Synapse's records are inaccurate. However, other
13 banks have successfully used Synapse's data to reconcile funds on their ledgers and the data
14 Ankura is using is predominately Synapse's data. Synapse's former CEO has made public
15 comments alleging that it is Evolve's records that are inaccurate. In addition, no end user that
16 has received their funds has informed the community that the balance they received was
17 different than what Synapse had published on our statements.

18 21. Evolve's internal records should have been sufficient to provide accurate accounting,
19 being more than capable of determining how much funds are available to both Plaintiffs and
20 all other end users similarly situated. Clearly, Evolve failed miserably in this regard.

21 22. Judge Barash has been extremely patient and kind towards Mr. Gonzales and other
22 impacted end users, permitting appearances in person or on Zoom for comment and questions
23 during the Synapse Bankruptcy hearings. During these hearings, it was made plain that the
24 funds that are frozen constitute property belonging to end users. Both, Judge Barash and the
25 Trustee, have said they have no legal authority to compel the banks to do anything with the
26 end user funds since they are not the estate of the debtor.

27 23. Why then are the Plaintiffs not waiting for the reconciliation process to complete? There
28 is one additional problem that has been known to both Evolve and Synapse as early as 2023,

1 possibly as early as 2020, but only made publicly known during the bankruptcy proceedings.
2 This problem completely invalidates any reason to wait for reconciliation and brings into
3 question Evolve's liability to a greater degree.

4 24. According to public comments made by the former CEO of Synapse, as well as court
5 documents filed by Yotta, Evolve is responsible for missing user funds tallying in the tens of
6 millions of dollars. The Trustee's report dated 6/13/2024 states the reconciliation "efforts
7 indicated an estimated shortfall of \$85 million." Due to the ongoing efforts, there has been a
8 range provided of \$65 million - \$96 million. A direct loss or misappropriation of end user
9 funds, of depositor funds, of the Plaintiffs' funds, while in the hands of Evolve. This is the
10 epitome, the definition of gross financial negligence.

11 25. During a status conference, Mr. Gonzales asked: "If reconciliation is completed and
12 shortfall does exist, will the banks withhold making payments to the end users or will they
13 pay out of pocket to return what rightfully belongs to us?" It was met with silence. Evolve's
14 attorneys were in attendance and actively participating in all other questions.

15 26. In a subsequent status conference, Mr. Gonzales asked the question again. This time,
16 Evolve's attorneys made the comment that they have \$34 million in reserve funds to pay end
17 users. If the shortfall is greater than \$34 million dollars, the question remains unanswered as
18 to who will pay that shortfall and how Evolve will choose who to pay and how much.

19 27. This significant shortfall does not exist because of any fraudulent behavior attributed to
20 the Plaintiffs. In fact, according to court documents filed by Yotta, the shortfall exists as a
21 direct result of Evolve's actions to charge fees and deal with a different fintech's migration.

22 28. Therefore, the Plaintiffs cannot in good faith and confidence trust Evolve Bank and Trust
23 to do right by the Plaintiffs after reconciliation. In any event, Evolve's liability to the
24 Plaintiffs for their funds is not changed by the reconciliation efforts or any possible outcome
25 of those efforts.

26 29. Evolve's very despicable, intentional, malicious, fraudulent, reckless behavior and
27 conduct goes beyond monies due to the Plaintiffs, but has violated the U.S. Constitution and
28 obliterated Tennessee consumer protection laws, all while disregarding Regulator guidance's.

1 FIRST AMENDMENT

2 RELIGIOUS FREE EXERCISE CLAUSE

3 30. Evolve’s intentional, malicious, fraudulent, reckless, reprehensible, and unconscionable
4 actions directly infringed on Mr. Gonzales Constitutional right to freely exercise his religious
5 beliefs.

6 31. U.S. Constitution First Amendment (bold and underline added for emphasis):

7 a. Congress shall make no law respecting an establishment of religion, **or prohibiting**
8 **the free exercise thereof**; or abridging the freedom of speech, or of the press; or the
9 right of the people peaceably to assemble, and to petition the Government for a
10 redress of grievances.

11 32. Further comment on the First Amendment:

12 a. https://constitution.congress.gov/browse/essay/amdt1-2-1/ALDE_00013267/

13 b. Nonetheless, the Religion Clauses extend only to sincere religious activities, and in
14 evaluating constitutional claims, the government may investigate whether a person’s
15 beliefs are insincere and whether they are secular, stemming from political,
16 sociological, or philosophical views rather than religious beliefs. [Footnote 20]

17 c. [Footnote 20]

18 i. Frazee v. Ill. Dep’t of Emp. Sec., 489 U.S. 829, 833 (1989); see also, e.g.,
19 Wisconsin v. Yoder, 406 U.S. 205, 216 (1972) (noting that philosophical
20 beliefs would not rise to the demands of the Religion Clauses, but finding
21 evidence for the claim that the traditional way of life of the Amish is not
22 merely a matter of personal preference, but one of deep religious conviction).
23 In a case interpreting a federal conscientious objector statute, the Supreme
24 Court said that the central consideration in determining whether . . . beliefs are
25 religious is whether these beliefs play the role of a religion and function as a
26 religion in the registrant’s life. Welsh v. United States, 398 U.S. 333, 339
27 (1970).

1 33. Both Plaintiffs are Oneness Apostolic Pentecostal Preachers. Mr. Gonzales holds a
2 General license with the United Pentecostal Church International, (General is one level
3 below Ordination). Both Plaintiffs are heavily involved in their local church ministry under
4 Rev. R. J. Sibley, pastor of The Jesus Church of Castroville. Rev. Sibley is an Ordained
5 minister with the United Pentecostal Church International. In accordance and direct
6 obedience to Biblical instructions, both Plaintiffs religiously pay tithes and offerings on their
7 income.

8 34. [Luke 11:42 KJV] 42 But woe unto you, Pharisees! for ye tithe mint and rue and all
9 manner of herbs, and pass over judgment and the love of God: these ought ye to have done,
10 and not to leave the other undone.

11 35. Jesus expected tithing as part of religious obedience. Faithfulness to tithing was not to
12 justify a lack of obedience in other scriptural matters.

13 36. The Plaintiffs view of the Godhead denies the Trinitarian doctrine, which has a direct
14 impact on the understanding of Biblical teachings on tithing and offering as well as these
15 comments made by Jesus in Luke 11.

16 37. The Plaintiffs are Oneness Pentecostal. This means their view of Jesus is that He is the
17 one true God of the Old Testament manifested inside of human flesh. Jesus is God
18 incarnated. Jesus is not a secondary person, but is indeed God Himself.

19 38. [1Ti 3:16 KJV] 16 And without controversy great is the mystery of godliness: God was
20 manifest in the flesh, justified in the Spirit, seen of angels, preached unto the Gentiles,
21 believed on in the world, received up into glory.

22 39. Paul wrote, concerning Jesus, that the only mystery that exists is “how” God was
23 manifested in the flesh. The mystery Paul wrote about was never in regards to the identity of
24 Jesus. Therefore, when Jesus spoke, God Himself was speaking. As Jesus said tithing was
25 something that “ought” to be done, it was not an optional suggestion from a secondary person
26 but rather a direct instruction from God Himself.

1 40. [Hebrews 13:8 KJV] & Jesus Christ the same yesterday, and today, and forever.

2 41. [Mal 3:8 KJV] & Will a man rob God? Yet ye have robbed me. But ye say, Wherein have
3 we robbed thee? In tithes and offerings.

4 42. God of the Old Testament considered it robbery to withhold paying tithes and offerings.
5 Since Jesus is indeed God Himself whom the Bible says is the same yesterday, today and
6 forever, then it is concluded that withholding tithing and offering is viewed as robbery in the
7 New Testament and a sin against God even to this day.

8 43. Abraham payed tithes to Melchizedek (Hebrews 7:1-10). Abraham's example predates
9 Mosaic law. This religious practice is therefore not part of the cultural / national laws that
10 were specific to the nation of Israel. Therefore, the practice of tithing and offering is indeed a
11 religious practice expected by God regardless of culture and nationality.

12 44. The Plaintiffs can demonstrate that this is a Biblical commandment that they have
13 adhered to religiously (Exhibits BM/BN).

14 45. Unique to this case is the timing the Plaintiffs lost access to their funds in relation to
15 when their paychecks were received. Mr. Gonzales had already received his paycheck and
16 had separated his tithe and offering funds from the rest of his budget (Exhibit AI - Yotta
17 balance screen Screen Shot 2024-05-31 at 9.55.45 AM).

18 46. Mrs. Gonzales did not have a tithing or offering set aside as her paycheck was expected
19 later.

20 47. As a direct result of Evolve's actions to revoke the Plaintiffs' access to their funds, Mr.
21 Gonzales was not able to pay his tithes and offerings to The Jesus Church of Castroville. Mr.
22 Gonzales was unable to fulfill his religious duty, a clear violation of Mr. Gonzales' U.S.
23 Constitutional First Amendment right under the religious Free Exercise clause.

24 48. It is neither religiously acceptable nor appropriate to treat the payment of tithes and
25 offering the same as one would a cell phone bill, an electric bill, a car payment, or any other
26 secular payment.

1 49. It would also not be appropriate to suggest that Mr. Gonzales should pay his tithes for his
2 May check out of his June paycheck (which will have its own tithe and offering payment). It
3 is not only a matter of budgeting, it is a matter of adhering to Biblical doctrine.

4 50. Biblically, tithing refers to 10% but not just any 10%, the first 10%.

5 a. [Proverbs 3:9 ESV] 9 Honor the LORD with your wealth and with the first fruits of
6 all your produce;

7 b. [Exodus 23:19a ESV] 19a "The best of the first fruits of your ground you shall bring
8 into the house of the LORD your God."

9 c. [Numbers 15:20-21 ESV] 20 Of the first of your dough you shall present a loaf as a
10 contribution; like a contribution from the threshing floor, so shall you present it. 21
11 Some of the first of your dough you shall give to the LORD as a contribution
12 throughout your generations.

13 d. [Numbers 18:12-18 ESV] 12 All the best of the oil and all the best of the wine and of
14 the grain, the first fruits of what they give to the LORD, I give to you. 13 The first
15 ripe fruits of all that is in their land, which they bring to the LORD, shall be yours.
16 Everyone who is clean in your house may eat it. 14 Every devoted thing in Israel shall
17 be yours. 15 Everything that opens the womb of all flesh, whether man or beast,
18 which they offer to the LORD, shall be yours. Nevertheless, the firstborn of man you
19 shall redeem, and the firstborn of unclean animals you shall redeem. 16 And their
20 redemption price (at a month old you shall redeem them) you shall fix at five shekels
21 in silver, according to the shekel of the sanctuary, which is twenty gerahs. 17 But the
22 firstborn of a cow, or the firstborn of a sheep, or the firstborn of a goat, you shall not
23 redeem; they are holy. You shall sprinkle their blood on the altar and shall burn their
24 fat as a food offering, with a pleasing aroma to the LORD. 18 But their flesh shall be
25 yours, as the breast that is waved and as the right thigh are yours.

26 51. The Biblical precedence of giving to God is to give the first fruits, the best, not what is
27 leftover and convenient. Therefore, the religious activity of tithing and offering should not be
28 misconstrued or treated in the same manner as a bill payment or some other budget item.

1 52. Tithing and offering are unique religious activities, demonstrated with the
2 aforementioned Biblical citations and the Plaintiffs religious adherence to the doctrine as
3 demonstrated by their local church records. Mr. Gonzales' Free Exercise of this religious
4 activity, protected by the First Amendment, has been clearly and undeniably violated by the
5 intentional, malicious, negligent, fraudulent, reckless, reprehensible, unconscionable, and
6 illegal actions of Evolve Bank and Trust. Every day that passes where Mr. Gonzales is
7 unable to access his funds and pay his tithes and offerings is another day his First
8 Amendment right is infringed.

9 53. Accordingly, the Court should award damages against the Defendant for intentional,
10 malicious, fraudulent, and reckless unfair and deceptive business practices of:
11 a. Violating Mr. Gonzales First Amendment right to Free Exercise of his religion.
12 b. The continued and prolonged infringement in excess of 4+ months at the time of this
13 writing.

14 54. See also comments under Prayer For Relief, starting at paragraph 152.

15
16 Tenn. Code Ann. § 47-50-109

17 BREACH OF CONTRACT

18 55. Tenn. Code Ann. § 47-50-109

19 It is unlawful for any person, by inducement, persuasion, misrepresentation, or
20 other means, to induce or procure the breach or violation, refusal or failure to
21 perform any lawful contract by any party thereto; and, in every case where a
22 breach or violation of such contract is so procured, the person so procuring or
23 inducing the same shall be liable in treble the amount of damages resulting from
24 or incident to the breach of the contract. The party injured by such breach may
25 bring suit for the breach and for such damages.

26 56. Evolve provided their justification for freezing the Plaintiffs' accounts on May 16th
27 through court documents filed in the Synapse bankruptcy case:
28

1 Evolve was authorized to take this action under Section 2.11 of the DDA
2 agreement(s) between Evolve and End Users (“DDA Agreement”), which
3 authorizes Evolve to “‘freeze’ or place a hold” on an End User’s DDA in the
4 event Evolve suspects any “irregular, unauthorized, or unlawful activity may be
5 occurring in connection with [the] Account” (Exhibit O - Evolve statement may
6 16 synapse bankruptcy hearing, page 6, lines 5-11).

7 57. For reference, we would like to provide the actual quote of section 2.11 (bold and
8 underline added for emphasis):

9 58. 2.11 Freezes, Blocking or Closing Accounts Due to Irregular or Unlawful Activities

10 You agree that if Bank suspects that any irregular, unauthorized, or unlawful
11 activity may be occurring in connection **with your Account**, Bank may “freeze”
12 or place a hold on the balance in such Account pending an investigation of such
13 activities. **If Bank freezes your Account, it will give any notice required under**
14 **the circumstances by the laws governing the Account**. If investigation confirms
15 Bank’s suspicions of irregular, unauthorized, or unlawful activity then,
16 notwithstanding anything to the contrary in this Agreement, Bank may
17 immediately close your Account, and may also close any or all other Accounts, if
18 necessary, to comply with applicable law. You agree that Bank may also freeze,
19 block, or close your Account as necessary in order to comply with regulations
20 issued by the United States Department of Treasury’s Office of Foreign Assets
21 Control (“OFAC”) (Exhibit G - Evolve Bank Deposit Agreement (per Synapse
22 website), page 13, 2.11).

23 59. The actual clause states that the bank may put a freeze on the Plaintiffs accounts if the
24 **Plaintiffs activity** is under investigation for “irregular, unauthorized, or unlawful activity.”
25 To this date, the Plaintiffs **have not received any notice** of an investigation from Evolve in
26 regards to their deposit accounts. No notice would be indicative that the Plaintiffs are most
27 likely under investigation for criminal behavior.
28

1 60. However, Evolve’s own comments admit that the reason for the freeze is not because of
2 any possible investigation for irregular or unlawful activities on either of the Plaintiffs’
3 accounts:

4 Evolve’s decision to freeze End User account activity on May 11, 2024 was a
5 time-sensitive decision of necessity, made in response to an unprecedented
6 revocation of Dashboard access, with no notice, and no explanation or promise of
7 restoration from Debtor (Exhibit O - Evolve statement may 16 synapse
8 bankruptcy hearing, page 6, lines 5-7).

9 61. The “Dashboard” referenced in Evolve’s comments is part of the ledgering and
10 reconciliation process that Evolve left primarily in the hands of a non-bank entity, Synapse.
11 By Evolve’s comments, we can deduce that Evolve’s ledgers and record keeping were not
12 sufficient to survive the insolvency of Synapse (a third-party non-bank entity). Since Evolve
13 has admitted that they never froze the Plaintiffs’ accounts as a matter of irregular or unlawful
14 activities on the Plaintiffs’ behalf, it is concluded that Evolve froze accounts because it did
15 not have in place proper risk mitigation plans to handle a foreseeable scenario in the business
16 model it chose to participate in. Evolve’s actions demonstrate Evolve only sought to protect
17 Evolve, not the End Users such as the Plaintiffs as Evolve tried to claim.

18 62. Therefore, Evolve’s use of 2.11 is malicious, intentional, fraudulent, reckless, negligent,
19 reprehensible, and unconscionable. There is no evidence to suggest that Evolve specifically
20 sought to investigate Mr. Gonzales or Mrs. Gonzales for irregular or unlawful activity. The
21 same can be said for the plethora of other similarly situated depositors. Evolve cannot
22 produce any evidence specifically naming the Plaintiffs that warrants any of the following:

- 23 a. A freezing of funds.
- 24 b. The placement of a hold.
- 25 c. The complete revocation of access to their funds **for months on end.**

26 63. Since there is no criminal investigation into the Plaintiffs’ accounts, a notice should have
27 been provided by Evolve explaining the freeze. To date, the only communication received by
28 Evolve is a notice of a data breach that occurred earlier this year. The Plaintiffs believe the

1 only reason they even received this notice is because of a comment Judge Barash made in
2 response to Evolve's attempt to point end users to Evolve's website. Evolve has not been
3 forthcoming at all throughout this ordeal, only providing communications when prompted or
4 when it best suits Evolve.

5 64. Evolves intentional, malicious, fraudulent, reckless, reprehensible and unconscionable
6 use of 2.11 to protect itself over the Plaintiffs and other similarly situated end users is the
7 definition of breach of contract.

8 65. Beyond the previous comments demonstrating Evolves reprehensible, unconscionable,
9 and illegal application of 2.11, Evolve has the problem of doublespeak.

10 66. A summary of Evolve's statements and continued narrative (Exhibit AV - Trustee 8th
11 status report, pages 15 - 26) is that the Plaintiffs were part of a program where the Plaintiffs
12 were offboarded from Evolve entirely. As a result, the Plaintiffs are bound to a new /
13 different agreement (Exhibit M - Synapse Brokerage LLC Customer Agreement). If Evolve
14 wishes to maintain that the Plaintiffs have no relationship with Evolve and are subject to a
15 different agreement, then Evolve cannot use section 2.11 of an outdated agreement.

16 67. The new agreement does not provide any such verbiage giving Evolve the right to
17 suspend transactions in the manner of 2.11 from the original agreement. Evolve cannot have
18 it both ways. They cannot have their cake and eat it too.

19 a. Exhibit M - Synapse Brokerage LLC Customer Agreement

20 68. Accordingly, the Court should award damages against the Defendant for intentional,
21 malicious, fraudulent, and reckless breach of contract. See also comments under Prayer For
22 Relief, starting at paragraph 152.
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28

1 Tenn. Code Ann. § 47-18-104 (b)(34)

2 (bold and underline added for emphasis)

3 (b)(34) Unreasonably raising prices or **unreasonably restricting** supplies of
4 **essential** goods, commodities or **services** in direct response to a crime, act of
5 terrorism, war, or natural disaster, regardless of whether such crime, act of
6 terrorism, war, or natural disaster occurred in the state of Tennessee;

7 69. As it is, the verbiage of 2.11 does not support Evolve’s right to protect Evolve from its
8 own poor business decisions. Evolve willfully chose to not have in place proper risk
9 management controls and ledgering practices for a foreseeable scenario. If such controls and
10 proper ledgering practices existed, the Plaintiffs would have been made whole in the matter
11 of days with no need for this lawsuit.

12 70. For comparison, the timeline the FDIC publishes on their website states: “the FDIC will
13 pay the depositor directly by check up to the insured balance in each account. Such payments
14 usually begin within a few days after the bank closing.” The FDIC would use the banks own
15 records to determine what is due to the depositors and be able to do so in the matter of days.
16 Evolve’s responsibility is to do the same but for end users of Synapse ecosystem. Evolve
17 chose to delay any efforts to do so, and chose to not provide proper oversight of Synapse
18 ledgers to protect against the possibility of Synapse becoming insolvent.

19 71. This responsibility is discussed more starting in paragraph 127.

20 72. Since the Plaintiffs were never under investigation and have endured (at the time of this
21 writing) 4+ months of loss of access to funds rightfully belonging to the Plaintiffs, this
22 intentional, malicious, fraudulent, reckless, reprehensible act by Evolve qualifies as being
23 “unreasonably restricted from essential services,” specifically basic banking services for
24 funds held at Evolve.

25 73. Accordingly, the Court should award damages against the Defendant for intentional,
26 malicious, fraudulent, and reckless unfair and deceptive business practices of:

- 27 a. Unreasonable restricting the Plaintiffs from normal banking services for a period of 4
28 months and counting.

1 74. See also comments under Prayer For Relief, starting at paragraph 152.

2
3 Tenn. Code Ann. § 47-18-102

4 (bold and underline added for emphasis):

5 This part shall be **liberally construed** to promote the following policies:

6 (1) To simplify, clarify, and modernize state law governing the **protection of the**
7 **consuming public** and to conform these laws with existing consumer protection
8 policies;

9 (2) To **protect consumers** and legitimate business enterprises **from those who**
10 **engage in unfair or deceptive acts or practices** in the conduct of any trade or
11 commerce in part or wholly within this state;

12 (3) To encourage and promote the development of fair consumer practices;

13 (4) To declare and to provide for civil legal means for maintaining ethical
14 standards of dealing between persons engaged in business and the consuming
15 public to the end that good faith dealings between buyers and sellers at all levels
16 of commerce be had in this state; and

17 (5) To promote statewide consumer education.

18 75. Wrongfully and illegally withholding funds for months while wrongfully applying a
19 contractual clause is reprehensibly unfair and unconscionable. Evolve’s malicious,
20 intentional, fraudulent, reckless, and deceptive misapplication of 2.11 demonstrates Evolve’s
21 complete disregard for the consequences of their decisions has upon consumers.

22 76. Their actions lead directly to the infringement of Mr. Gonzales’ religious freedoms
23 protected by the First Amendment right. In addition, Evolve’s despicable actions caused
24 reputational harm to Mrs. Gonzales with her creditor (more comments start at paragraph 78).

25 77. Accordingly, the Court should award damages against the Defendant for intentional,
26 malicious, fraudulent, and reckless unfair and deceptive business practices. See also
27 comments under Prayer For Relief, starting at paragraph 152.

1 Tenn. Code Ann. § 47-4-402 (a), (b), (c)

2 (bold and underline added for emphasis)

3 (a) Except as otherwise provided in this chapter, **a payor bank wrongfully**
4 **dishonors an item if it dishonors an item that is properly payable**, but a bank
5 may dishonor an item that would create an overdraft unless it has agreed to pay
6 the overdraft.

7 (b) **A payor bank is liable to its customer for damages proximately caused by**
8 **the wrongful dishonor of an item**. Liability is limited to actual damages proved
9 and may include damages for an arrest or prosecution of the customer or other
10 consequential damages. Whether any consequential damages are proximately
11 caused by the wrongful dishonor is a question of fact to be determined in each
12 case.

13 (c) A payor bank's **determination of the customer's account balance** on which a
14 decision to dishonor for insufficiency of available funds is based may be made at
15 any time between the time the item is received by the payor bank and the time that
16 the payor bank returns the item or gives notice in lieu of return, and no more than
17 one determination need be made. If, at the election of the payor bank, a
18 subsequent balance determination is made for the purpose of reevaluating the
19 bank's decision to dishonor the item, the account balance at that time is
20 determinative of whether a dishonor for insufficiency of available funds is
21 wrongful.

22 78. A scheduled ACH transaction (modern day electronic check) was set to pay Mrs.
23 Gonzales' Citi Costco card. Since Evolve suspended all debit and ACH services, when Citi's
24 systems requested the funds from Evolve, the transaction was rejected. As a result, Mrs.
25 Gonzales account's credibility has been damaged and the creditor (Citi) no longer awards
26 Mrs. Gonzales immediate credit for ACH bill payment transactions.

27 79. Since Mrs. Gonzales no longer receives immediate credit for her bill payments, that
28 means her available credit calculation will often not directly relate to what is on her balance

1 resulting in lower credit availability than what would normally be available to a client in
2 good standing, reducing her overall spending power. The Plaintiffs took step by step
3 screenshots to demonstrate this behavior on 9/18/2024 (4+ months after the Plaintiffs lost
4 access to their funds). The issue is ongoing.

5 80. In May, all of the Plaintiffs' funds were frozen. This meant the Plaintiffs' had to use their
6 credit cards without a means of paying them. Mrs. Gonzales' Citi Costco credit limit was
7 \$2,000 when originally opened. After the bill payment failed to post, the Plaintiffs' daily
8 expenditures quickly maxed out the credit limit. In response, the Mrs. Gonzales requested
9 and received a credit limit increase. The limit is now \$4000.

10 81. As the month of June came along, the credit card had all of May and partial June
11 expenditures on the account. The Plaintiffs' scheduled another payment on Mrs. Gonzales'
12 account. As the month of June continued, the Plaintiffs discovered that despite making the
13 successful payment, the available credit did not improve. The bill payment was not credited
14 to the account's available credit. Eventually, the account's available credit was \$0 even
15 though successful payments were made. The Plaintiffs, once again, struggled to pay for daily
16 items while trying to regain control over their budget.

17 82. It has been months since the rejected ACH transaction in May. Even after Mrs. Gonzales
18 used an entirely different account to make multiple subsequent payments without issues since
19 May, Mrs. Gonzales's account credibility with Citi remains negatively impacted and is
20 denied the benefit of immediate credit. There is no date or communication from Citi stating
21 when or if this will ever be repaired.

22 83. Evolve cannot demonstrate the Plaintiffs' specific accounts and balances would have
23 fallen into any category of decisions that would justify the rejection of this ACH bill payment
24 transaction. Evolve cannot produce any evidence that would prove that the Plaintiffs
25 accounts were subject to insufficient funds. Conversely, Evolve's own comments indicated
26 that Evolve had absolutely no idea of what the Plaintiffs' balances should have been.
27 Evolve's comments demonstrate a complete lack of control of basic (implied) banking
28 functionality, ledgering.

1 84. Because of Evolve’s negligent behavior, reputational harm has occurred between Mrs.
2 Gonzales and her creditor (Citi). This is not just any credit card, this the Plaintiffs’ Costco
3 membership account. Simply ending the relationship is not an appropriate suggestion or
4 remedy.

5 85. Not only was one scheduled bill payment rejected, harming Mrs. Gonzales’ credibility
6 with her creditor (Citi), but all subsequent attempts to recover the Plaintiffs’ funds failed
7 (ACH transfers, ATMs, platform instructions, direct communication with Evolve’s customer
8 service). All attempts were rejected for no legal cause.

9 86. The Plaintiffs’ financial statements prove that sufficient funds existed in both of their
10 accounts individually for all transactions the Plaintiffs’ attempted.

11 a. Exhibit D - All Time Statement - Jordon Gonzales

12 b. Exhibit E - All Time Statement - Charinda Gonzales

13 87. Accordingly, the Court should award damages against the Defendant for intentional,
14 malicious, fraudulent, reckless, unfair, and deceptive business practices of:

15 a. Dishonoring multiple valid and payable transactions.

16 b. Impacting Mrs. Gonzales credibility with her creditor.

17 88. See also comments under Prayer For Relief, starting at paragraph 152.

18
19 Tenn. Code Ann. § 47-18-104 (b)(27)

20 (bold and underline added for emphasis)

21 (b)(27) **Engaging in any other act or practice which is deceptive to the**
22 **consumer or to any other person**; provided, however, that enforcement of this
23 subdivision (b)(27) is vested exclusively in the office of the attorney general and
24 reporter;

25 89. While this is reserved for the Tennessee attorney general, it should be noted that there is
26 no other direct code within § 47-18-104 that accurately reflects this scenario in its entirety.

27 90. That does not mean that Evolve has not committed atrocities against the Plaintiffs. It
28 simply means that the scenario concerning a bank completely severing depositors from their

1 funds because of the bank’s own banking failures was unforeseen or considered covered by
2 other laws and regulations. Refer also to TN § 47-18-102’s “liberally construed” instruction.

3
4 Tenn. Code Ann. § 47-18-104 (b)(12)

5 (b)(12) Representing that a consumer transaction confers or involves rights,
6 remedies or obligations that it does not have or involve or which are prohibited by
7 law

8 91. “Cowman v. Allen Monuments, Inc., 500 S.W.2d 223, 225– 26 (Tex.Civ.App.—
9 Texarkana 1973, no writ.); cf. La Sara Grain Co. v. First Nat’l Bank of Mercedes, 673
10 S.W.2d 558, 564 (Tex.1984) (**deposit creates implied agreement that bank will disburse**
11 **funds only at the direction of depositor**)” (bold and underline added for emphasis).

12 a. Exhibit U - Bank One, Texas, N.A. v. Taylor _ Cases _ Texas _ Westlaw Edge, page
13 18 (highlighted).

14 92. Evolve actively tried to shirk itself from its responsibilities and mandated that the
15 Plaintiffs seek remediation from a company that essentially no longer existed. Evolve denied
16 the Plaintiffs had any standing to order Evolve on what to do with the Plaintiffs money,
17 refusing to service the Plaintiffs requests. Evolve indicated that only Synapse Brokerage
18 could give instructions. Synapse Brokerage **is not the depositor**.

19 93. There is an implied right for the depositor’s instructions to be followed by the bank as per
20 the court case cited above. Evolve honored debit card and ACH transactions (items not
21 initiated through Synapse Brokerage or the fintech platforms) prior to May 11th. These were
22 at the **depositor’s discretion/instruction, not Synapse’s**. Examples: debit card purchases in
23 the grocery store, Verizon auto payment for cellular. Neither of these ran through Synapse
24 first. These are types of instructions that Evolve was willing to follow in advance of May
25 11th. After May 11th, why is it that only Synapse Brokerage could give instructions? Evolve
26 denied the Plaintiffs their rights to their own funds while over attributing rights to Synapse
27 Brokerage (which essentially no longer exists).

1 94. Evolve cannot demonstrate any legal reasoning for dishonoring the Plaintiffs' instructions
2 nor for the severing of access from those funds for months on end. Intentionally denying
3 basic depositor rights is malicious, reprehensible, reckless, and fraudulent.

4 95. Accordingly, the Court should award damages against the Defendant for intentional,
5 malicious, fraudulent, and reckless unfair and deceptive business practices of:

6 a. Ignoring the Plaintiffs' rightful and legal claim to their funds and their right to
7 instruct Evolve on what to do with those funds.

8 96. See also comments under Prayer For Relief, starting at paragraph 152.

9
10 Tenn. Code Ann. § 47-18-104

11 (bold and underline added for emphasis)

12 (b)(5) Representing that goods or services have sponsorship, approval,
13 **characteristics**, ingredients, **uses**, **benefits** or **quantities** that they do not have or
14 that a person has a sponsorship approval, status, affiliation or connection that such
15 person does not have;

16 97. Evolve allowed its name to be used in manner to help advertise FDIC insurance. Evolve
17 did not warn the Plaintiffs themselves nor did Evolve instruct the other business partners in
18 this banking model to warn the Plaintiffs that FDIC insurance would not be available if any
19 of the non-bank entities in the business model were to become insolvent. This is a scenario
20 that is entirely foreseeable. Being a predictable scenario, Evolve should have addressed the
21 possibility in their risk management and provided proper disclaimers to the Plaintiffs and
22 other end users. The possibility exists that Evolve also misunderstood FDIC insurance, which
23 demonstrates further Evolve's negligence.

24 98. In court documents filed by Yotta, Evolve participated in a lengthy scheme of reporting
25 inaccurate ledgers to Yotta. Evolve hid the fact that the accounts holding the Plaintiffs' funds
26 were short millions of dollars. Evolve reported that all funds were available, providing untrue
27 statements that did not accurately reflect missing money.

1 99. This practice started before the Plaintiffs was even a client in this banking model and the
2 Plaintiffs would have no way of knowing this information if it was not for other court
3 documents filed by Yotta. This means that the Plaintiffs deposited funds into a banking
4 model that was already in trouble and short millions of dollars. Evolve willing accepted new
5 customers and new funds without any warning given to Yotta or the Plaintiffs as to the
6 shortfall that existed.

7 Despite this shortfall, according to original deposit agreement, Evolve is liable and
8 accountable for the full deposits owed to the Plaintiffs regardless of the performance of those
9 funds at the hands of Evolve or Synapse (Exhibit G - Evolve Bank Deposit Agreement (per
10 Synapse website), page 38, highlighted portion). Therefore, regardless if a shortfall exists due
11 to the following possible scenarios, Evolve is absolutely and undeniably liable to the
12 Plaintiffs for their full balances:

- 13 a. Ledgering errors between Evolve and Synapse, or
- 14 b. If Evolve misappropriated funds by:
 - 15 i. Paying itself, or
 - 16 ii. If Evolve withdrew funds for the migration of another fintech,

17 100. Evolve's continued narrative is that the Plaintiffs funds were continuously swept into the
18 brokerage program. Public comment from the former CEO of Synapse and an email from the
19 same to Mr. Gonzales indicates that sweeps ended in October of 2023, the same month of the
20 new agreement. Therefore, Evolve misrepresented their own services and the truth of the
21 ongoing relationship Evolve had with Synapse. Evolve "weaponized" this brokerage
22 agreement to claim that the Plaintiffs funds were not at Evolve, demonstrating Evolve's
23 intentional, malicious, negligent, reckless, and reprehensible behavior. Assuming the
24 transfers did continue (which they did not, proven by the fact that the Plaintiffs' funds remain
25 at Evolve to this day), Evolve's lack of knowing what was occurring within its own systems
26 is completely unacceptable for a regulated bank, utterly irresponsible and reprehensible.

27 101. Accordingly, the Court should award damages against the Defendant for intentional,
28 malicious, fraudulent, and reckless unfair and deceptive business practices of:

- a. Participating in the misleading use of FDIC insurance advertisement.
- b. Reporting no issues with user funds, including the Plaintiffs, despite knowing and contributing directly to that shortfall.
- c. Accepting new customers and funds while knowing a shortfall existed.
- d. Claiming the Plaintiffs' funds were swept into Synapse Brokerage and located at other banks when the truth is that the funds stopped being swept in the same month of the new agreement and existed at Evolve.

102. See also comments under Prayer For Relief, starting at paragraph 152.

Tenn. Code Ann. § 28-3-105 (2)

(2) Actions for the detention or conversion of personal property;

103. In Evolve's exhibit submitted with the Trustee's 8th status report, Evolve attempted to suggest that the reason for no funds being at Evolve is because of the sweep program (despite the same document reporting over \$46 million in depositor funds were at Evolve, Exhibit AV - Trustee 8th status report page 5 highlighted). That all deposits made from October to May were immediately swept into the brokerage program.

- a. Exhibit AV - Trustee 8th status report page 15-16.

104. It is publicly available information that Synapse stopped brokerage sweeps a few weeks after "going live." The former CEO of Synapse has replied via email directly to Mr. Gonzales informing him that the sweeps stopped in October of 2023. That means sweeps should not have occurred, at a minimum, for these months: November 2023 – May 2024.

- a. Exhibit AN - Sankaet on DDAs on Evolve Screen Shot 2024-08-30 at 11.33.56 AM.
- b. Exhibit BJ - Gmail - Mr. Jordon Gonzales - Lawsuit against Evolve, highlighted portions.

105. Because of this information, in combination with the Plaintiffs perceived experience during this time, it is entirely reasonable for the Plaintiffs to believe that there should have been funds in the deposit accounts held at Evolve.

1 106. In addition, the court documents filed by Yotta, which are based on Synapse’s records,
2 indicate that Evolve paid itself using funds belonging to end users prior to the Plaintiffs
3 creating their individual accounts. Evolve paid itself the following:

- 4 a. January 27, 2020: \$1,191,831.76
- 5 b. February 27, 2020: \$1,049,719.31
- 6 c. March 24, 2020: \$941,099.24
- 7 d. May 29, 2020: \$856,224.25
- 8 e. May 29, 2020: \$710,508.92
- 9 f. June 26, 2020: \$436,768.58

10 107. Evolve knew that funds were missing from funds specifically owned by end users as a
11 direct result of their own “fees.” Despite knowing this, Evolve continued to allow new
12 clients, including the Plaintiffs, to deposit funds into this financial black hole. This behavior
13 goes to show that Evolve was willing to and did misappropriate user funds. Evolve did so at
14 least one more time while the Plaintiffs did have funds in the ecosystem.

15 108. In 2023, Mercury, another fintech, had its business model change with Evolve. As part of
16 this change, Mercury migrated off Synapse and dealt with Evolve directly. This required the
17 transfer of funds. According to court filings, Evolve botched the migration by using funds
18 belonging to Yotta clients to make Mercury’s accounts whole, causing an even greater deficit
19 of user funds, of the Plaintiffs funds, at Evolve.

20 109. Evolve is a direct contributor to the shortfall that is documented by the Trustee’s report in
21 the Synapse bankruptcy.

22 110. The plaintiffs could not be aware of what was occurring behind the scenes until this
23 information was brought to light from the Synapse Bankruptcy and Yotta’s court documents.

24 111. Therefore, the Plaintiffs allege that Evolve has participated in the illegal conversion of
25 funds that included the Plaintiffs funds.

26 112. Accordingly, the Court should award damages against the Defendant for intentional,
27 malicious, fraudulent, reckless, unfair and deceptive business practices of:

- 28 a. Illegally continuing to “sweep” funds when sweeps were reportedly not being swept.

- 1 b. Misleading the Plaintiffs regarding the sweeps, stating funds existed elsewhere when
2 the reality was the funds absolutely should have existed at Evolve.
3 c. Illegally using the Plaintiffs funds (at least in part) to fund Mercury and contribute to
4 a significant shortfall in Yotta users' funds.

5 113. See also comments under Prayer For Relief, starting at paragraph 152.

6
7 CFPB § 1005.8

8 (bold and underline added for emphasis)

9 (a) Change in terms notice —

10 (1) Prior notice required. **A financial institution** shall mail or deliver a written
11 notice to the consumer, at least 21 days before the effective date, of any change in
12 a term or condition required to be disclosed under § 1005.7(b) of this part if the
13 change would result in:

- 14 (i) Increased fees for the consumer;
15 (ii) Increased liability for the consumer;
16 (iii) Fewer types of available electronic fund transfers; or
17 (iv) Stricter limitations on the frequency or dollar amount of transfers.

18 114. The Plaintiffs were not given ample time to understand or accept the new agreement. In
19 fact, no affirmative consent was ever provided by either of the Plaintiffs that they agreed to
20 this change. The new agreement was based on an opt out versus an opt in. Federal law quoted
21 above requires **financial institutions** to provide notices 21 days in advance of the effective
22 date regarding term changes. The Plaintiffs received the email on October 4th, 2023.
23 Communications from the former Synapse CEO indicated sweeps occurred in October 2023
24 and ended in the same month. The email indicates that the effective date is “on or after the
25 date of this notice (the “Effective Date”)”. This is a direct violation of the 21-day notice
26 requirement.

27 a. Exhibit AV - Trustee 8th status report page 22.
28

1 115. Additionally, the notice was not provided by Evolve, whom the Plaintiffs had a deposit
2 agreement with. It was provided by Yotta, on behalf of Synapse, both of which are non-bank
3 entities, a violation of the federal regulation requiring a financial institution where the
4 deposits are held to make the communication in changes in term. The original Deposit
5 Agreement was provided by Synapse on behalf of Evolve. Evolve is a financial institution.
6 Synapse is not. Therefore, any changes to the agreement should have been provided by
7 Evolve. Since Evolve did not provide the changes, Evolve should not have participated in
8 this newer contract.

9 116. Accordingly, the Court should award damages against the Defendant for intentional,
10 malicious, fraudulent, and reckless unfair and deceptive business practices of:

- 11 a. Failing to provide adequate notice of a change in terms .
12 b. Participating in an illegally conceived and executed financial arrangement (new
13 agreement).

14 117. See also comments under Prayer For Relief, starting at paragraph 152.

15
16 Tenn. Code Ann. § 47-18-104 (b)(8)

17 (bold and underline added for emphasis)

18 (b)(8) Disparaging the goods, services or business of another by **false or**
19 **misleading representations of fact**;

20 118. Evolve wrongfully told the Plaintiffs that Synapse Brokerage and Synapse are
21 responsible for restoring the Plaintiffs money. They also claimed that Synapse's records are
22 unreliable. Evolve also claimed the Plaintiffs funds were not at Evolve. The first and third
23 items listed have been commented on previously in this complaint.

24 119. Synapse records generate end user monthly statements. The Plaintiffs' statements are
25 accurate to the transaction and matches their budgeting (which is tracked at the transaction
26 level using Dave Ramsey's EveryDollar app). Other banks have completed reconciliation and
27 begun making payments. How then can Synapse records be reliable for other banks and for
28 hundreds of thousands of end users receiving statements, but not accurate enough for

1 Evolve? Evolve is just making excuses to continue to shirk its responsibilities and duties to
2 the Plaintiffs.

3 120. As the saying goes, “time will tell.” At the time of this writing, 5+ months have passed
4 since the Plaintiffs have lost access to their funds. Evolve is the last bank to disburse any
5 funds. Evolve absolutely has the Plaintiffs funds which matches what the Synapse Trial
6 Balance stated. Evolve’s claims then are not a reflection on the quality of Synapse data but
7 on Evolve’s inability to understand the ledgers. This is an Evolve issue, not as they would
8 want you to believe, an inaccurate Synapse ledgering issue.

9 121. Accordingly, the Court should award damages against the Defendant for intentional,
10 malicious, fraudulent, and reckless unfair and deceptive business practices of:

- 11 a. Guiding the Plaintiffs to a non-existent, non-bank entity to regain access to their
12 funds.
- 13 b. Ignoring the credibility of the Plaintiffs’ financial statements with misleading
14 ledgering conjecture that is ultimately Evolve’s responsibility to have dealt with prior
15 to this crisis.
- 16 c. Claiming the Plaintiffs’ funds were swept into Synapse Brokerage and located at
17 other banks when the truth is that the funds stopped being swept in the same month of
18 the new agreement and are known to be at Evolve.

19 122. See also comments under Prayer For Relief, starting at paragraph 152.
20
21

22 Tenn. Code Ann. § 47-18-104

23 (b)(1) Falsely passing off goods or services as those of another;

24 123. The reverse scenario of this law is just as an important to consider: when company X
25 falsely says the services requested of them is the responsibility of company Y when in reality
26 company X is responsible.

27 124. Mr. Gonzales called Evolve directly in May. Evolve’s customer support stated that the
28 Plaintiffs funds were not located at Evolve and told to speak to Synapse Brokerage. Synapse

1 Brokerage has no employees and is not a bank holding any funds. Evolve falsely misled Mr.
2 Gonzales as to who has the Plaintiffs funds and who had the ability return those funds.

3 125. Evolve has continued this narrative, shirking their duties to the Plaintiffs' for over 2
4 months before taking any productive steps. It was only at the end of July when Evolve hired
5 a third-party consulting firm to do what Evolve could not in order to disburse funds held at
6 Evolve.

7 a. Exhibit P - 5th Trustee status report, page 14 highlighted portion.

8 126. The Plaintiffs can provide communications that contradict Evolve's statement on where
9 the funds are located. In addition, the other banks have already begun contacting end users
10 and making payments to them. The Plaintiffs have not received any communication by these
11 other banks which have nearly paid out every dollar they are responsible for. Evolve is the
12 last bank to disburse funds. Using basic deductive reasoning, that means the Plaintiffs' funds
13 are indeed at Evolve, despite Evolve's claims.

14 a. Exhibit SC - Charinda Yotta Email about location of funds

15 b. Exhibit SJ - Jordon Yotta Email about location of funds

16 c. Exhibit BA - Trustee 9th status report, page 6 highlighted portion.

17 127. Evolve's disregard for their responsibility is not only demonstrated by their attempts to
18 send customers to an empty company. Evolve sought to offboard the funds and their duties to
19 the Trustee once she was appointed. Evolve waited for two months hoping to get instructions
20 to move the funds off their system, deliberately prolonging the suffering of the Plaintiffs. By
21 their own admission, "once they realized" that what they wanted was not going to occur, it
22 was only then that they decided to do the first responsible thing they have done during this
23 whole debacle: hired a third-party consulting firm to help reconcile ledgering data.

24 128. Evolve falsely claimed that the user funds were not at Evolve. Synapse Brokerage is not
25 a bank and had no funds in its possession and is not the owner of the funds. The other banks
26 that held any funds successfully performed reconciliations on their own and at the time of
27 this writing, nearly paid out all funds they hold. The banks have communicated with the end
28 users they have funds for. The Plaintiffs' funds were not located amongst them, evidenced by

1 the lack of communications from those banks with the Plaintiffs. By deductive reasoning, the
2 Plaintiffs funds must exist at Evolve, contrary to Evolves prior claims.

3 129. Therefore, banking services denied by Evolve and misleadingly directed to Synapse
4 Brokerage is in violation of falsely passing off services as those of another.

5 130. Accordingly, the Court should award damages against the Defendant for intentional,
6 malicious, fraudulent, reckless, unfair and deceptive business practices of:

7 a. Falsely stating the funds existed somewhere else.

8 b. Falsely stating that Evolve could not service the Plaintiffs and redirecting the
9 Plaintiffs to an empty business that has no capabilities or means of helping the
10 Plaintiffs.

11 131. See also comments under Prayer For Relief, starting at paragraph 152.

12
13 31 CFR 1020.410(c) and (c)(2)

14 JOINT REGULATOR STATEMENTS

15 132. Evolve and all other similarly situated banks should have been aware of a joint statement
16 published on June 7th, 2023 by the Board of Governors of the Federal Reserve System,
17 Federal Deposit Insurance Corporation, Office of the Comptroller of the Currency. Because
18 of the length of these quotes, the start and stop will be denoted by a horizontal line (bold and
19 underline added for emphasis).

20
21 -----Start Quotations-----

22
23 133. **Whether activities are performed internally or via a third party, banking**
24 **organizations are required to operate in a safe and sound manner** [Footnote 3] and in
25 compliance with applicable laws and regulations. [Footnote 4] **A banking organization's**
26 **use of third parties does not diminish its responsibility to meet these requirements to**
27 **the same extent as if its activities were performed by the banking organization in-house.**

28 To operate in a safe and sound manner, a banking organization establishes risk management

1 practices to **effectively manage the risks arising from its activities, including from third-**
2 **party relationships.** [Footnote 5]

3 134. [Footnote 3] See 12 U.S.C. 1831p-1. The agencies implemented section 1831p-1 by
4 regulation through the ‘Interagency Guidelines Establishing Standards for Safety and
5 Soundness.’ See 12 CFR part 30, appendix A (OCC), 12 CFR part 208, appendix D-1
6 (Board); and 12 CFR part 364, appendix A (FDIC). End of Footnote 3.

7 135. [Footnote 4] References to applicable laws and regulations throughout this guidance
8 include but are not limited to those **designed to protect consumers** (such as fair lending
9 laws and prohibitions against **unfair, deceptive or abusive acts or practices**) and those
10 addressing financial crimes. End of Footnote 4.

11 136. [Footnote 5] **This guidance is relevant for all third-party relationships,** including
12 situations in which a supervised banking organization provides services to another supervised
13 banking organization.

14 a. Exhibit C - Interagency Guidance on Third-Party Relationships Risk Management,
15 pages 1-2, highlighted portions.

16 137. A banking organization is responsible for conducting its activities in compliance with
17 applicable laws and regulations, including those activities involving third parties. **The use of**
18 **third parties does not abrogate these responsibilities.** Therefore, it is important for a
19 contract to specify the obligations of the third party and the banking organization to comply
20 with applicable laws and regulations. It is also important for the contract to provide the
21 banking organization with the right to monitor and be informed about the third party's
22 compliance with applicable laws and regulations, **and to require timely remediation if**
23 **issues arise.** Contracts may also reflect considerations of relevant guidance and self-
24 regulatory standards, where applicable.

25 a. Exhibit C - Interagency Guidance on Third-Party Relationships Risk Management,
26 page 13, highlighted portions (bold and underline added for emphasis).

27 138. Proper oversight and accountability are important aspects of third-party risk management
28 because they help enable a banking organization to minimize adverse financial, operational,

1 or other consequences. **A banking organization's board of directors has ultimate**
2 **responsibility for providing oversight for third-party risk management and holding**
3 **management accountable.** The board also provides clear guidance regarding acceptable risk
4 appetite, approves appropriate policies, and ensures that appropriate procedures and practices
5 have been established. A banking organization's management is responsible for developing
6 and implementing third-party risk management policies, procedures, and practices,
7 commensurate with the banking organization's risk appetite and the level of risk and
8 complexity of its third-party relationships.

- 9 a. Exhibit C - Interagency Guidance on Third-Party Relationships Risk Management,
10 page 20, highlighted portions (bold and underline added for emphasis).

11 -----End Quotations-----
12

13
14 139. Evolve absolutely must have been aware of the risk of the business model they were
15 participating in – naivety must not be excused. Evolve should have taken into consideration
16 the scenario of Synapse or other Fintech platform partners becoming insolvent and the
17 impact it would have to Evolve’s direct business and the consumers that Evolve undeniably
18 has a duty to protect.

19 140. Lack of awareness is inexcusable and only goes to suggest negligence on behalf of
20 Evolve. Awareness of the possibility and the lack of appropriate mitigating action is also
21 inexcusable and demonstrates pure negligence and malice. In either scenario, consumers
22 were placed into a situation of unnecessary risk by Evolve.

23 141. Evolve’s comments admit to relying on a non-bank entity to perform vital basic banking
24 functionality (ledgering). Evolve should have been aware of this risk and sought greater
25 control and oversight. When asked, the former CEO of Synapse confirmed that Evolve did
26 not provide guidance for ledgering or attempt to offer ledgering services. It is wholly
27 apparently that Evolve did not take appropriate steps to mitigate and prevent ledgering issues
28 in advance of being cut off from Synapse’s “Dashboard.”

1 142. Not only was there no plan to mitigate a lack of access, there was no plan to properly
2 understand Synapse’s ledgers. Evolve left the critical and vital banking functionality of
3 ledgering primarily in the hands of a non-bank entity and it did not exercise its duty to
4 protect consumers by requiring their own systems and the third-party systems to be prepared
5 for risk aversion. The repercussions of such decision:

6 a. Requiring a third-party investigation firm to reconcile ledgers.

7 b. The continued lack of access to funds that the Plaintiffs are enduring and fighting for.

8 143. This whole situation has demonstrated Evolve’s lack of adherence to the joint regulator
9 publication. As a result, future regulation to reinforce what should have already occurred is
10 now being prepared:

11 The Federal Deposit Insurance Corp. is expected to release a proposed rule
12 requiring banks to maintain ledgers of “for benefit of” accounts opened by third-
13 party fintechs so the banks can identify how much end-user money they’re
14 holding, according to people familiar with the matter who were unable to speak
15 publicly about the coming proposal. – Evan Weinberger, Bloomberg Law
16 Correspondent

17 a. [https://news.bloomberglaw.com/banking-law/fdic-eyeing-proposal-to-protect-
18 customers-from-fintech-failures](https://news.bloomberglaw.com/banking-law/fdic-eyeing-proposal-to-protect-customers-from-fintech-failures)

19 144. The joint statement by the three regulating offices warned all banks of just this type of
20 scenario. A lack of risk management and controls over third parties by the over reliance on
21 the non-bank entities. **The joint statement was clear in that this reliance does not**
22 **diminish the duties and responsibilities of the banks at all.** This warning was clearly
23 underappreciated by Evolve, evidenced by the fact they now require a third-party to perform
24 reconciliation and the Plaintiffs have been without access to their funds 4+ months.

25
26 145. On July 25th, 2024, the same regulators published another joint statement:

27 This statement highlights examples of risk management practices by banks to
28 manage such risks. **This statement reemphasizes existing guidance;** it does not

1 alter existing legal or regulatory requirements or establish new supervisory
2 expectations.

3 a. Exhibit AD - SR 24-5 Joint statement, page 1, highlighted portion.

4 The agencies support responsible innovation and support banks in pursuing third-
5 party arrangements **in a manner consistent with safe and sound practices and**
6 **in compliance with applicable laws and regulations, including, but not**
7 **limited to, those designed to protect consumers...**

8 b. Exhibit AD - SR 24-5 Joint statement, page 1, highlighted portion (bold and underline
9 added for emphasis).

10 **In some arrangements, banks rely on one or multiple third parties to**
11 **maintain the deposit and transaction system of record;** process payments
12 (sometimes with the ability to directly submit payment instructions to payment
13 networks); perform regulatory compliance functions; provide end-user facing
14 technology applications; service accounts; perform customer service; and perform
15 complaint and dispute resolution functions. These third parties are sometimes
16 referred to as intermediate platform providers, processors, middleware providers,
17 aggregation layers, and/or program managers. **A bank's use of third parties to**
18 **perform certain activities does not diminish its responsibility to comply with**
19 **all applicable laws and regulations.**"

20 c. Exhibit AD - SR 24-5 Joint statement, page 1, highlighted portion (bold and underline
21 added for emphasis).

22 146. The regulators attempted to reemphasize everything they have already addressed to the
23 banks. They did not believe that anything warranted new laws as the existing laws were clear
24 and so were these joint statements. Federal code as it is states in 31 CFR 1020.410(c) and
25 (c)(2):

26 (c) Each bank shall, in addition, retain either the original or a copy or
27 reproduction of each of the following:
28

1 (c)(2) Each statement, ledger card or other record on each deposit or share
2 account, showing each transaction in, or with respect to, that account;

3 147. Implied in this record keeping is the ability to know everything about the accounts on the
4 bank's books. A bank should never say "We don't know your account balance."

5 148. As stated previously, a result of the banks not taking proper control, Evolve included,
6 new binding regulation is in the works to finish what the banks should have done long before
7 any crisis ever occurred.

8 149. The joint statement in 2023 (Exhibit C - Interagency Guidance on Third-Party
9 Relationships Risk Management) mandated that **a timely remediation** should occur if an
10 issue arises. Evolve purposefully delayed for at least two months in performing any
11 reconciliation activities, hoping the Trustee would accept the task (Exhibit C - Interagency
12 Guidance on Third-Party Relationships Risk Management, page 12 highlighted portion). The
13 Trustee wisely and correctly rejected this since the funds did not constitute property of the
14 debtor's estate. It was not until July 29th, 2024, over two months after separating the
15 Plaintiffs from their funds, that Evolve retained a third-party to reconcile ledgers. Ledgers
16 that Evolve should have been in control of since the beginning. Evolve's inaction and delay
17 in providing a timely remediation has wrongfully prolonged the suffering endured by the
18 Plaintiffs and others similarly situated.

19 150. Accordingly, the Court should award damages against the Defendant for intentional,
20 malicious, fraudulent, and reckless unfair and deceptive business practices of:

- 21 a. Failing to provide accurate accounting of the Plaintiffs' funds and accounts.
22 b. Willful disobedience to joint regulator statements as to the bank's responsibilities in
23 fintech business relationships.

24 151. See also comments under Prayer For Relief, starting at paragraph 152.

25
26 PRAYER FOR RELIEF

27 152. The Plaintiffs are asking for the reimbursement of reasonable legal expenses. The
28 Plaintiffs are Pro Se, traveling 12 hours one way in order to participate in this lawsuit. The

1 Plaintiffs are having to use their own PTO and even time off without pay. These are things
2 that the Plaintiffs should not have to continue to bear the burden of simply because a bank
3 failed to be a bank and chose to flaunt consumer protection laws attempting to protect itself,
4 instead of consumers. These amounts can be proven in trial.

5 153. The Plaintiffs individually elect for punitive damages. The Plaintiffs believe have cause
6 to seek the maximum amount of punitive damages Tennessee law permits for each Plaintiff
7 individually.

8 154. Tenn. Code Ann. § 29-39-104 (a) (5) (emphasis added)

9 (5) Punitive or exemplary damages shall not exceed an amount equal to **the greater of:**

10 (A) Two (2) times the total amount of compensatory damages awarded; or

11 (B) Five hundred thousand dollars (\$500,000);

12 155. Nothing in Tenn. Code Ann. § 29-39-104 restricts the Plaintiffs from seeking the cap in
13 punitive damages for each Plaintiff individually. In fact, because each Plaintiff has their own
14 unique account where the other is not a signer, and because each Plaintiff can demonstrate a
15 unique injury (Mrs. Gonzales' credibility with a creditor and the infringement of Mr.
16 Gonzales' First Amendment right to Free Exercise of his religion), the trier of fact (the jury
17 per the Plaintiffs election), must consider awarding punitive damages separately to each
18 Plaintiff, not collectively. The Plaintiffs should not be unduly punished for simply being
19 married.

20 156. The Plaintiffs can justify seeking maximum punitive damages amounts by citing Johnson
21 v. Ford Motor Co., Bullock v. Phillip Morris USA, an Illinois supreme court case of sexual
22 assault, and a Philadelphia case against Johnson & Johnson. The common denominator in
23 every case was the reprehensibility of the conducted perpetrated by the defendant, which
24 resulted in punitive damages far greater than the usual ratios referenced. Evolve's conduct is
25 nothing short of reprehensible: to disregard joint regulator guidance's and act in a manner
26 that is in violation of multiple consumer protection laws and the U.S. Constitution.

27 157. The Plaintiffs are also asking the Court to award any additional and further relief as the
28 Court may deem just and proper.

JURY TRIAL

158. The Plaintiffs request a trial by jury for all issues that can be decided accordingly.

CONCLUSION

159. The Plaintiffs wish to remind the Court that this whole situation has taken a serious toll on the Plaintiffs; emotionally, physically, and financially. Evolve’s actions have been beyond reprehensible, demonstrating all four requirements for punitive damages: intentional, malicious, fraudulent, and reckless.

160. The Plaintiffs believe they can adequately present their argument and exhibits to a jury trial as soon as the Court can accommodate one. The Plaintiffs already have digital copies of everything they can and may use available in a dropbox folder and are prepared to share these to the defense.

DATED OCTOBER 14TH, 2024

JORDON GONZALES
CHARINDA GONZALES
PLAINTIFFS

BY: _____

Jordon Gonzales
Charinda Gonzales
Plaintiffs