

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 1:24-cv-03259

OLGA MARGUL, KELLI JO CLAXTON,
HENRY YEH, COLIN SMITH, ROD
GENDRON, and KAYLA MORRIS, individually
and on behalf of all similarly situated persons,

Plaintiffs,

v.

EVOLVE BANK & TRUST, an Arkansas bank;
EVOLVE BANCORP, INC., an Arkansas limited
liability company; AMG NATIONAL TRUST, a
Colorado bank; LINEAGE BANK, a Tennessee
bank; and AMERICAN BANK, Inc. a
Pennsylvania bank.

Defendants.

JURY TRIAL DEMANDED

CLASS ACTION COMPLAINT

Plaintiffs Olga Margul, Kelli Jo Claxton, Henry Yeh, Colin Smith, Rod Gendron, and Kayla Morris (collectively, “Plaintiffs”) bring this class action complaint individually and on behalf of all others similarly situated against American Bank (“American”), AMG National Trust (“AMG”), Evolve Bank & Trust and Evolve Bancorp Inc. (“Evolve”), and Lineage Bank (“Lineage”) (collectively, the “Partner Banks” or “Defendants”). The allegations contained in this class action complaint are based on Plaintiffs’ personal knowledge of facts pertaining to themselves and upon information and belief, including further investigation conducted by Plaintiffs’ counsel, as to the remainder.

I. NATURE OF THE ACTION

1. This case concerns the gross mismanagement of cash deposits of ordinary consumers who have lost access to their holdings. Plaintiffs and members of the class created accounts on various financial technology platforms (“FinTechs”) and initiated cash deposits. Because FinTechs are not themselves banks, they cannot maintain custody of customer funds. Instead, customer funds were maintained at one or more of the four Partner Banks.

2. The Partner Banks, in turn, used a middleman company named Synapse Financial Technologies, Inc. (“Synapse”) to open deposit accounts, process transactions, and manage the account ledgers on behalf of approximately 100 FinTech companies and their end users.

3. Unfortunately, the Partner Banks failed to adequately maintain and safeguard customers’ funds. Significant ledger irregularities were discovered by the Partner Banks indicating the account balances set forth in Synapse’s account ledger were materially inaccurate and, therefore, could not be used as the basis for distributing funds to end users. As a result, many customers’ funds were either lost, stolen, or misplaced, with one Partner Bank blaming the next. Thousands of customers are left stranded without access to their funds. And despite demanding the return of their funds, the Partner Banks refused.

II. PARTIES

4. Plaintiff Olga Margul is a resident of the State of Massachusetts. She was present in Massachusetts at the time she signed up for an account with the FinTech Juno and deposited funds.

5. Plaintiff Kelli Jo Claxton is a resident of the State of California. She was present in California at the time she signed up for an account with the FinTech Yotta and deposited funds.

6. Plaintiff Henry Yeh is a resident of the State of California. He was present in California at the time he signed up for an account with the FinTech Yotta and deposited funds.

7. Plaintiff Colin Smith is a resident of the State of Michigan. He was present in Michigan at the time he signed up for an account with the FinTech Yotta and deposited funds.

8. Plaintiff Rod Gendron is a resident of the State of Indiana. He was present in Indiana at the time he signed up for an account with the FinTech Juno and deposited funds.

9. Plaintiff Kayla Morris is a resident of the State of Arizona. She was present in Arizona at the time she signed up for an account with the FinTech Yotta and deposited funds.

10. Defendant American Bank, Inc. is a bank organized under the laws of Pennsylvania whose corporate headquarters and principal place of business is located at 615 Waterfront Dravie, Suite 501, Allentown, Pennsylvania 18102.

11. Defendant AMG National Trust is a bank organized under the laws of Colorado whose corporate headquarters and principal place of business is located at 6295 Greenwood Plaza Blvd, Greenwood Village, Colorado 80111.

12. Defendant Evolve Bank & Trust is a bank organized under the laws of Arkansas with locations in California. Its corporate headquarters and principal place of business is located at 6000 Poplar Avenue, Suite 300, Memphis, Tennessee, 38119.

13. Defendant Evolve Bancorp, Inc. is a bank holding company organized under the laws of Arkansas whose corporate headquarters and principal place of business is located at 6000 Poplar Avenue, Suite 300, Memphis, Tennessee, 38119.

14. Defendant Lineage Bank is a bank organized under the laws of Tennessee whose corporate headquarters and principal place of business is located at 120 5th Ave N, Franklin, Tennessee 37064.

III. JURISDICTION AND VENUE

15. This Court has jurisdiction over this lawsuit under the Class Action Fairness Act, 28 U.S.C. § 1332(d)(2), because this is a proposed class action in which: (i) there are at least 100 class members; (ii) the aggregate amount in controversy exceeds \$5,000,000, exclusive of interest and costs; and (iii) at least one putative class member and one Defendant are citizens of different states.

16. Venue is proper in this district pursuant to 28 U.S.C. § 1391 because a substantial part of the events giving rise to the claims herein occurred in this judicial district.

17. Further, as set forth herein, Defendants have contacts in this district sufficient to subject them to the personal jurisdiction of this district as if this district were a separate state. On information and belief, Defendants transacted with consumers in this district. On information and belief, Defendants continuously and systematically offered banking services to consumers in this District, maintained an interactive commercial service through the FinTechs at issue, and allowed customers in this District to transact with Defendants. On information and belief, Defendants all conduct substantial business in this District and a substantial part of the acts and omissions complained of occurred in this District. On information and belief, each Defendant has a physical presence in Colorado, offers banking services in Colorado, and/or transacts with customers physically present in Colorado. Additionally, AMG is organized under the laws of Colorado and has its principal place of business in Colorado.

18. Exercising jurisdiction over Defendants is fair, just, and reasonable considering the quality and nature of Defendants' acts that occur in Colorado and which affect interests located in Colorado. On information and belief, Defendants have purposefully availed themselves of the privilege of conducting activities in Colorado, and should reasonably anticipate being haled into court in Colorado.

IV. GENERAL ALLEGATIONS

A. Fintech Platforms and Financial Accounts

19. Companies colloquially described as "FinTechs" are financial technology businesses that offer software with the goal of helping individuals manage their finances. Most FinTechs offer web- and mobile application-based solutions as alternatives to traditional banks.

20. Because the FinTechs at issue are not themselves banks, they could not accept and retain customer deposits. Rather, the FinTechs partnered with the Partner Banks who, in turn, maintained custody of customers' funds. In other words, the FinTechs allowed their customers (i.e., ordinary members of the public) to deposit cash into the Partner Banks through the FinTechs' online platforms, mediated by Synapse, and the Partner Banks maintained custody of these funds.

21. Like any banking customer, FinTech users reasonably believed their funds were being held at the Partner Banks in a safe and secure manner and were available to access and withdraw on

demand. FinTech users also reasonably believed their account balances (the dollar figure shown to users on the FinTech platforms) were accurate.

B. Synapse Financial Technologies, Inc. Collapses

22. Synapse was founded in 2014. Synapse touted itself as the pioneer of the banking-as-a-service (“BaaS”) model. It functioned as a middleman between traditional banks and FinTechs. In this role, Synapse opened deposit accounts on behalf of approximately 100 FinTech companies and their end users at four different banks—Evolve, American Bank, AMG, and Lineage—and Synapse managed the account ledgers.

23. More specifically, beginning in 2014, Synapse opened Demand Deposit Accounts (“DDAs”) on behalf of approximately 100 FinTechs and their end users at the Partner Banks. Beginning in 2020, Synapse developed its cash management program in connection with its subsidiary, Synapse Brokerage LLC (“Synapse Brokerage”), through which Synapse began opening Cash Management Accounts (“CMA Accounts”) on behalf of the FinTechs and their end users at the Partner Banks. Most end user funds were held in omnibus “For Benefit Of” Accounts (“FBO Accounts”)¹ and the remaining funds are held in DDAs across the four Partner Banks.

24. In doing so, Synapse combined data received from Partner Banks with its own customer transaction data, and delivered that data to the FinTechs. This meant that FinTech users relied on the FinTechs and Partner Banks to account for users’ funds; and the FinTechs and Partner Banks, in turn, relied in part on Synapse to keep track of users’ funds.

25. On April 22, 2024, Synapse filed for Chapter 11 bankruptcy in the Central District of California. After the bankruptcy filing, it came to light that approximately *\$85 million* in customer funds across *100,000 customers* had gone missing.

26. The bankruptcy process has revealed significant failings, including that Synapse and the Partner Banks did not maintain accurate ledgers, leading to incorrect customer fund balances. As a result,

¹ A “For Benefit Of” or “FBO” account is a type of custodial account. It is a pooled account that allows a company to manage funds on behalf of, or “for the benefit of,” one or more of their users without assuming legal ownership of that account.

many customers have been left unable to access funds held at the Partner Banks and unable to pay essential bills or living expenses.

C. The Partner Banks Have Not Returned All Customer Funds

27. Following Synapse’s collapse, the Partner Banks allegedly began reconciling customers’ funds and working to correct the materially inaccurate ledgers. Despite these purported efforts, the four Partner Banks have not accounted for and returned all deposits belonging to FinTech users. Instead, the Partner Banks are (1) blaming each other for the inability to unwind Synapse’s ledger and fully reconcile missing user funds, and/or (2) asserting that all funds maintained at those Partner Banks have been distributed.

28. For example, according to Synapse bankruptcy filings from November 2024, Evolve reported publicly that it concluded its reconciliation efforts as of October 18, 2024. Evolve also reported that it would begin notifying end users of funds held and making distributions on November 4, 2024. According to the bankruptcy Trustee’s direct communications from end users and publicly available information, Evolve notified many end users that it holds funds for those end users in amounts considerably *less* than shown on the Synapse ledger. As a result, Evolve will distribute considerably less to such end users, and Evolve asserts that the missing funds are in the custody of other Partner Banks.

29. AMG and Lineage, on the other hand, dispute the accuracy of Evolve’s reconciliation. For example, in a public letter dated November 12, 2024, these two banks contend that “calculating specific end user balances by bank was impossible because Synapse often directed large bulk bank-to-bank transfers of funds that bore no relationship whatsoever to specific individual end users or their transactions.” AMG and Lineage also denied that they hold “substantial additional funds” belonging to fintech users, instead claiming that they already distributed over 99% and 90%, respectively, of funds owed to FinTech users.

30. The result is that many customers are left without access to their cash deposits and with no clear ability to discern which of the Partner Banks holds their money. But their money is necessarily held by one or more of the Partner Banks.

**D. The Failure to Maintain, Account, and Provide Access to Customer Funds
Confirms Material Risk Management Failures**

31. The Partner Banks' inability to track and provide immediate access to customer funds is indicative of material risk management failures.

32. For example, Evolve was issued a cease and desist order by the Federal Reserve on June 14, 2024, two months after the Synapse bankruptcy filing.² This order stemmed from an examination of Evolve conducted in early 2023. Therefore, Evolve Bank must have been aware of significant operational and compliance issues for at least one year preceding Synapse's bankruptcy filing.

33. Similarly, Lineage Bank entered a consent order with the FDIC on January 30, 2024, four months before the Synapse bankruptcy filing.³ Although this consent order did not specify the timing of an earlier exam, the level of detail and breadth of issues contained in the consent order also suggest that significant compliance issues existed and must have been known by Lineage Bank well before Synapse's bankruptcy filing.

34. Banks are expected to maintain contingency and business continuity plans that address the potential failure of critical third parties. Synapse was clearly such a critical third party, and yet none of the Partner Banks had a plan in place for what to do in the event of operational issues at Synapse—let alone failure.

35. The Partner Banks' lack of direct bank access to Synapse's ledger, lack of contingency planning, and failure to maintain their own copy of the ledger all contributed to their respective failures to fulfill the most fundamental responsibility in banking: to keep track of the money.

36. The fact that the failure of a startup technology provider left several banks unable to process accounts worth over \$250 million, and that millions of dollars remain frozen over four months later (with, on information and belief, many millions apparently unaccounted for) means those banks had major lapses in their risk management.

² Cease and Desist Order Issued Upon Consent Pursuant to the Federal Deposit Insurance Act, as amended, In re Evolve Bancorp, Docket Nos. 24-012-B-HC, 24-012-B-SM (Fed. Rsrv. Sys. June 7, 2024), available at <https://www.federalreserve.gov/newsevents/pressreleases/enforcement20240614a.htm>.

³ <https://orders.fdic.gov/sfc/servlet.shepherd/document/download/0693d00000BrEIHAHV?operationContext=S1>

37. Had the Partner Banks pushed sooner or more forcibly for detailed reconciliations or greater access to Synapse's systems, the Parter Banks would have recognized the scope of the problem. The Partner Banks also could have remedied the problem without freezing users out of access to their funds.

38. Plaintiffs and Class Members, through their accounts with various FinTechs, deposited money into the Partner Banks which they have been unable to access for months.

39. Moreover, Plaintiffs and Class Members have now been offered only a small percentage of the funds they deposited with the Partner Banks through the FinTechs back.

40. On information and belief, the remaining funds of Plaintiffs and Class Members are still in the Partner Banks' hands and the Partner Banks are acting so as to keep said funds despite those funds being Plaintiffs' and Class Members'.

E. Class Action Allegations

41. Plaintiffs bring this action on behalf of themselves and all persons similarly situated pursuant to Rule 23(b)(2), 23(b)(3), and 23(c)(4) of the Federal Rules of Civil Procedure and seeks certification of the following class:

All persons residing in the United States who have been denied access to their funds held by Evolve Bank and Trust, AMG National Trust, American Bank, or Lineage Bank, beginning April 22, 2024.

42. The nationwide Class is collectively referred to as the "Class" and "Class Members." Excluded from the Class are the Defendants, the officers and directors of the Defendants at all relevant times, members of their immediate families and their legal representatives, heirs, successors or assigns and any entity in which either Defendants have or had a controlling interest.

43. Plaintiffs reserve the right to expand, limit, modify, or amend the class definitions stated above, including the addition of one or more subclasses, in connection with a motion for class certification, or at any other time, based upon, among other things, changing circumstances, or new facts obtained during discovery.

44. **Numerosity.** The Class is so numerous that joinder of all members in one action is impracticable. The exact number and identities of the members of the Class is unknown to Plaintiffs at

this time and can only be ascertained through appropriate discovery, but on information and belief, Plaintiffs allege that there are in excess of 1,000 members of the Class.

45. **Typicality.** Plaintiffs' claims are typical of those of other members of the Class, all of whom have suffered similar harm due to Defendants' course of conduct as described herein.

46. **Adequacy of Representation.** Each Plaintiff is an adequate representative of the Class and will fairly and adequately protect the interests of the Class. Each Plaintiff has retained attorneys who are experienced in the handling of complex litigation and class actions, and Plaintiffs and their counsel intend to diligently prosecute this action.

47. **Existence and Predominance of Common Questions of Law or Fact.** Common questions of law and fact exist as to all members of the Class that predominate over any questions affecting only individual members of the Class. These common legal and factual questions, which do not vary among members of the Class, and which may be determined without reference to the individual circumstances of any member of the Class, include, but are not limited to, the following:

- a. Whether Defendants held funds belonging to members of the Class.
- b. Whether Defendants were obligated to return funds to members of the Class.
- c. Whether Defendants converted and/or refused to return funds belonging to members of the Class.
- d. Whether Defendants failed to adequately track, safeguard, and maintain funds belonging to members of the Class.
- e. Whether Plaintiffs and the Class have sustained damages.
- f. Whether Plaintiffs and the Class are entitled to restitution.
- g. Whether injunctive relief is appropriate and necessary.
- h. Whether Defendants' conduct was undertaken with conscious disregard of the rights of the members of the Class and was done with fraud, oppression, and/or malice.

48. **Superiority.** A class action is superior to other available methods for the fair and efficient adjudication of this controversy because individual litigation of the claims of all members of the Class is impracticable. Requiring each individual class member to file an individual lawsuit would unreasonably consume the amounts that may be recovered. Even if every member of the Class could afford individual

litigation, the adjudication of at least tens of thousands of identical claims would be unduly burdensome to the courts. Individualized litigation would also present the potential for varying, inconsistent, or contradictory judgments and would magnify the delay and expense to all parties and to the court system resulting from multiple trials of the same factual issues. By contrast, the conduct of this action as a class action, with respect to some or all of the issues presented herein, presents no management difficulties, conserves the resources of the parties and of the court system, and protects the rights of the members of the Class. Plaintiffs anticipate no difficulty in the management of this action as a class action. The prosecution of separate actions by individual members of the Class may create a risk of adjudications with respect to them that would, as a practical matter, be dispositive of the interests of the other members of the Class who are not parties to such adjudications, or that would substantially impair or impede the ability of such non-party Class members to protect their interests.

FIRST CAUSE OF ACTION
MONEY HAD AND RECEIVED
(Against all Defendants)

49. Plaintiffs restate the preceding allegations as if set forth herein.
50. Plaintiffs and the Class each registered accounts on one or more FinTech platforms that contracted with and utilized Synapse's services.
51. Plaintiffs and the Class each deposited funds at one or more of the Partner Banks through the FinTech platforms.
52. The Partner Banks had in their possession funds belonging to Plaintiffs and the Class. Plaintiffs and the Class are the owners, and entitled to possession, of their respective funds deposited at the Partner Banks.
53. The Partner Banks have not returned the funds belonging to Plaintiffs and the Class in full.
54. The Partner Banks have refused access to the funds belonging to Plaintiffs and the Class.
55. Accordingly, as more fully set forth above, Defendants had in their possession money which in equity and good conscience belongs to Plaintiffs and proposed Class members. That money should be refunded to Plaintiffs and proposed Class Members.

SECOND CAUSE OF ACTION

UNJUST ENRICHMENT

(Against all Defendants)

56. Plaintiffs restate the preceding allegations as if set forth herein.

57. Plaintiffs and the Class each registered accounts on one or more FinTech platforms that contracted with and utilized Synapse's services.

58. Plaintiffs and the Class each deposited funds at one or more of the Partner Banks through the FinTech platforms.

59. The Partner Banks had in their possession funds belonging to Plaintiffs and the Class.

60. The Partner Banks have not returned the funds belonging to Plaintiffs and the Class in full.

61. The Partner Banks have been unjustly enriched in retraining the cash deposits belonging to Plaintiffs and the Class.

62. The Partner Banks have also been unjustly enriched by accruing interest and deriving profits from the unauthorized use of Plaintiffs' and the Class's funds.

63. The Partner Banks' retention of this money under the circumstances is unjust and inequitable.

64. As a direct and proximate result of Defendants' misconduct, Plaintiffs and the Class are entitled to restitution and disgorgement in an amount to be proven at trial.

THIRD CAUSE OF ACTION

NEGLIGENCE

(Against all Defendants)

65. Plaintiffs restate the preceding allegations as if set forth herein.

66. Plaintiffs and the Partner Banks have a special relationship that gives rise to the Partner Banks' duties to Plaintiffs and Class Members to act reasonably to (a) hold cash deposits for Plaintiffs' and the Class's benefit; (b) allow Plaintiffs and the Class to access their cash deposits on demand and/or with reasonable notice; (c) protect Plaintiffs and the Class from unreasonable interference with their right

and ability to access their funds; and (d) employ commercially adequate practices and procedures regarding the accounting and tracking of such funds.

67. The Partner Banks each breached its duty to Plaintiffs and the Class by failing to maintain and hold cash deposits, failing to accurately account for cash deposits, and denying access to cash deposits without cause.

68. The harms inflicted upon Plaintiffs and Class members were reasonably foreseeable. The Partner Banks were aware that consumers relied upon financial institutions to store and safeguard cash deposits, and provide prompt access to cash deposits.

69. The Partner Banks were also aware that the failure to provide access to cash deposits was likely to result in harm above and beyond the amount of the account balance, including the inability to satisfy other debts and pay for necessities of life.

70. As a direct and proximate result of the Partner Banks' failures described herein, Plaintiffs and the Class have been deprived of their cash deposits, access to cash deposits, accrued interest thereon.

71. Plaintiffs and the Class have also suffered emotional distress, anxiety, and fear upon being notified that their accounts were frozen and cash balances inaccessible and/or misplaced.

72. Plaintiffs, on behalf of themselves and the Class seek, damages and interest thereon in an amount to be proven at trial.

FOURTH CAUSE OF ACTION

CONVERSION

(Against all Defendants)

73. Plaintiffs restate the preceding allegations as if set forth herein.

74. Plaintiffs and the Class deposited funds with the Partner Banks.

75. Plaintiffs and the Class owned and had a right to possess the cash funds deposited with the Partner Banks.

76. Plaintiffs and the Class demanded the return of their cash funds deposited with the Partner Banks.

77. Defendants wrongfully refused to return the property deposited by Plaintiffs and the Class upon proper demand. Defendants have refused to return, lost, or wrongfully disposed of the property deposited by Plaintiffs and the Class.

78. Plaintiffs and the Class did not consent to the misconduct described herein.

79. Defendants' misconduct injured Plaintiffs and the Class.

80. The converted funds are specifically identifiable and in a fixed amount.

81. As a result of the foregoing actions of Defendants, Plaintiffs and the Class have been damaged in an amount to be proven at trial. Plaintiffs seek all available remedies including general damages, special damages, punitive damages, injunctive relief, attorneys' fees, and costs.

FIFTH CAUSE OF ACTION

BREACH OF FIDUCIARY DUTY

(Against all Defendants)

82. Plaintiffs restate the preceding allegations as if set forth herein.

83. As the custodian of funds, Defendants owed a fiduciary duty to Plaintiffs and the Class to store, maintain, and safeguard their cash deposits. Defendants were obligated to hold cash deposits for the benefit of Plaintiffs and the Class, and would not sell, loan, or otherwise alienate such funds except as instructed by Plaintiffs and the Class.

84. Defendants also owed a fiduciary duty to provide access to cash deposits and return cash deposits upon reasonable demand.

85. Plaintiffs and the Class entrusted the Partner Banks to ensure the safekeeping of their assets and to provide them with access to and control over their accounts and the assets within those accounts.

86. As alleged above, Defendants breached their fiduciary duties to Plaintiffs and the Class. Defendants failed to store, maintain, and safeguard Plaintiffs' and the Class's cash deposits. Defendants failed to employ reasonable measures to verify the accuracy and amount of account balances. Defendants failed to properly account for, provide access to, or timely return these funds.

87. As a result of the foregoing actions of Defendants, Plaintiffs and the Class have been damaged in an amount to be proven at trial. Plaintiffs seek all available remedies including general damages, special damages, punitive damages, injunctive relief, attorneys' fees, and costs.

SIXTH CAUSE OF ACTION

ACCOUNTING

(Against all Defendants)

88. Plaintiffs restate the preceding allegations as if set forth herein.

89. Plaintiffs and the Class each registered accounts on one or more FinTech platforms that contracted with and utilized Synapse's services.

90. Plaintiffs and the Class each deposited funds at one or more of the Partner Banks through the FinTech platforms.

91. The Partner Banks had in their possession funds belonging to Plaintiffs and the Class.

92. The Partner Banks have not returned the funds belonging to Plaintiffs and the Class in full.

93. The Partner Banks have not provided access to the funds belonging to Plaintiffs and the Class.

94. The Partner Banks have failed to provide an accounting and/or sufficient information and documentation concerning the amount and location of Plaintiffs' and the Class's funds.

95. Plaintiffs and the Class are entitled to accounting as it pertains to the amount and location of their funds.

96. A remedy at law is inadequate because, without an accounting, Plaintiffs and the Class are unable to verify the extent of damage incurred as a result of Defendants' wrongdoing.

SEVENTH CAUSE OF ACTION

CONSTRUCTIVE TRUST

(Against all Defendants)

97. Plaintiffs restate the preceding allegations as if set forth herein.

98. Plaintiffs and the Class each registered accounts on one or more FinTech platforms that contracted with and utilized Synapse's services.

99. Plaintiffs and the Class each deposited funds at one or more of the Partner Banks through the FinTech platforms.

100. The Partner Banks had in their possession funds belonging to Plaintiffs and the Class.

101. The Partner Banks have not returned the funds belonging to Plaintiffs and the Class in full.

102. Equity and justice require that the Partner Banks be deemed to hold these funds in constructive trust for Plaintiffs and the Class.

103. Plaintiffs and the Class are entitled to imposition of a constructive trust upon any accounts held by the Partner Banks which contain funds belonging to Plaintiffs and the Class.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, individually and on behalf of the proposed Class, respectfully pray for following relief:

- a. Certification of this case as a class action on behalf of the proposed Class and any subclasses defined above, appointment of Plaintiffs as Class representative, and appointment of their counsel as Class counsel;
- b. An award to Plaintiffs and the proposed Class and subclasses of restitution and/or other equitable relief, including, without limitation, restitutionary disgorgement;
- c. An injunction ordering Defendants to cease the business practices complained of herein;
- d. An award of all economic, monetary, actual, consequential, and compensatory damages caused by Defendants' conduct;
- e. An award of nominal, punitive, and statutory damages where available;
- f. Reasonable expenses and attorneys' fees;
- g. Pre- and post-judgment interest, to the extent allowable; and
- h. For such further relief that the Court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiffs, individually and on behalf of the proposed Class, demand a trial by jury for all claims so triable.

Dated: November 22, 2024

By: /s/ M. Anderson Berry

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Attorneys for Plaintiffs

**Pro Hac Vice* forthcoming

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____ .

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____ , who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify)*: _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 _____ .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____ .

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____ , who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify)*: _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

District of Colorado

OLGA MARGUL, KELLI JO CLAXTON, HENRY YEH, COLIN SMITH, ROD GENDRON, and KAYLA MORRIS, individually and on behalf of all similarly situated persons,

Plaintiff(s)

v.

EVOLVE BANK & TRUST, an Arkansas bank; EVOLVE BANCORP, INC., an Arkansas limited liability company; et al.

Defendant(s)

Civil Action No. 1:24-cv-03259

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) AMG NATIONAL TRUST, a Colorado bank. 6295 Greenwood Plaza Blvd, Greenwood Village, Colorado 80111.

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff’s attorney, whose name and address are: M. Anderson Berry, Esq. Clayeo C. Arnold, A Professional Corporation 865 Howe Avenue, Sacramento, CA 95825

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____ .

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____ , who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify)*: _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

District of Colorado

OLGA MARGUL, KELLI JO CLAXTON, HENRY YEH, COLIN SMITH, ROD GENDRON, and KAYLA MORRIS, individually and on behalf of all similarly situated persons,

Plaintiff(s)

v.

EVOLVE BANK & TRUST, an Arkansas bank; EVOLVE BANCORP, INC., an Arkansas limited liability company; et al.

Defendant(s)

Civil Action No. 1:24-cv-03259

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* EVOLVE BANK & TRUST, an Arkansas bank.
6000 Poplar Avenue, Suite 300, Memphis, Tennessee, 38119

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

M. Anderson Berry, Esq.
Clayo C. Arnold, A Professional Corporation
865 Howe Avenue, Sacramento, CA 95825

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____ .

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____ , who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify)*: _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 _____ .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

District of Colorado

OLGA MARGUL, KELLI JO CLAXTON, HENRY
YEH, COLIN SMITH, ROD GENDRON, and KAYLA
MORRIS, individually and on behalf of all similarly
situated persons,

Plaintiff(s)

v.

EVOLVE BANK & TRUST, an Arkansas bank;
EVOLVE BANCORP, INC., an Arkansas limited
liability company; et al.

Defendant(s)

Civil Action No. 1:24-cv-03259

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* LINEAGE BANK, a Tennessee bank.
120 5th Ave N, Franklin, Tennessee 37064

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

M. Anderson Berry, Esq.
Clayo C. Arnold, A Professional Corporation
865 Howe Avenue, Sacramento, CA 95825

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____ .

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____ , who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify)*: _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 _____ .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

CIVIL COVER SHEET

JS 44 (Rev. 10/20) District of Colorado

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

OLGA MARGUL, CHRISTOPHER CHERRY, KELLI JO CLAXTON, HENRY YEH, COLIN SMITH, RON

(b) County of Residence of First Listed Plaintiff Middlesex County, MA (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number) M. Anderson Berry, Esq., Clayeo C. Arnold, APC 865 Howe Ave, Sacramento, CA 95825 916-239-4778

DEFENDANTS

AMG NATIONAL TRUST, a Colorado bank; EVOLVE BANK & TRUST, an Arkansas bank; EVOLVE BANCORP, INC., an

County of Residence of First Listed Defendant Arapahoe County, CO (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State: PTF 1, DEF 1, INCORPORATED OR PRINCIPAL PLACE OF BUSINESS IN THIS STATE: PTF 4, DEF X4
Citizen of Another State: PTF X2, DEF 2, INCORPORATED AND PRINCIPAL PLACE OF BUSINESS IN ANOTHER STATE: PTF 5, DEF 5
Citizen or Subject of a Foreign Country: PTF 3, DEF 3, FOREIGN NATION: PTF 6, DEF 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

Table with 5 columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal categories like Insurance, Personal Injury, Real Estate, Labor, etc.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District (specify), 6 Multidistrict Litigation - Transfer, 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 28 U.S.C. § 1332(d)(2)

Brief description of cause: Class Action Fairness Act

AP Docket

VII. REQUESTED IN COMPLAINT:

X CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$

CHECK YES only if demanded in complaint: JURY DEMAND: X Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE DOCKET NUMBER

DATE 11/22/2024 SIGNATURE OF ATTORNEY OF RECORD

/s/M. Anderson Berry

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here. United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
- Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
- Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
- Original Proceedings. (1) Cases which originate in the United States district courts.
- Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441.
- Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
- Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
- Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
- Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
- Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
- PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7.** Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service.
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
- Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
- Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.