

DATA-ENTRY 11-17-11  
PICK UP THIS DATE

1004808

C.C.C.L. # 2

CAUSE NO.

AMERICAN EXPRESS CENTURION  
BANK  
Plaintiff

vs.

MELISSA MCLAIN  
Defendant(s)

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IN THE COUNTY COURT

AT LAW \_\_\_\_

HARRIS COUNTY, TEXAS

(1)  
201  
W/PAD  
R103  
Held

**PLAINTIFF'S ORIGINAL PETITION AND FIRST  
REQUEST FOR WRITTEN DISCOVERY**

TO THE HONORABLE JUDGE OF SAID COURT:

Plaintiff **AMERICAN EXPRESS CENTURION BANK** files its Original Petition and would respectfully show the Court it is entitled to damages from Defendant(s), as follows:

**I. DISCOVERY, VENUE, AND PARTIES**

1. Under TRCP 190.2, Plaintiff requests that discovery be conducted under Level 1 discovery control plan.
2. Defendant is a resident of **HARRIS** County, Texas and may be served with process at **10102 INWOOD DR, HOUSTON TX 77042**. Defendant's DL# (last 3 digits): unknown. Defendant's Social Security #(last 4 digits): **\*\*\*-\*\*-5635**.
3. The amount in controversy is within the jurisdiction of this Court and appropriate for the requested discovery level. Venue for this case is proper in this County as it is the County where the Defendant resides.
4. All conditions precedent have been performed or have occurred.

## II. BREACH OF CONTRACT

5. Defendant opened a credit account with Plaintiff and resulted in a valid and enforceable contract under which Plaintiff extended credit to Defendant. Defendant's account bore the last four digits \*\*\*\*\* 1007 ("Defendant's Account").
6. Defendant used the line of credit for the purchase of goods, wares, merchandise, services, and/or cash advances. By using and accepting the benefits of the credit account, Defendant consented to the terms and conditions of the credit agreement and agreed to make timely payments for the balance charged to Defendant's account. Plaintiff fully performed under the contract.
7. Defendant failed to repay advances per the agreement. After all just and due offsets and credits, Defendant owes Plaintiff \$16464.32 on Defendant's Account.
8. Defendant's breach of contract caused Plaintiff injury.

## III. ATTORNEYS' FEES

9. Defendant's breach caused Plaintiff to employ the undersigned law firm. Under Texas CPRC Chapter 38, Plaintiff seeks recovery of its reasonable and necessary attorneys' fees.
10. Despite being presented with a demand for payment at least thirty (30) days prior to filing of this Case, Defendant did not pay the amount owing.

## IV. DISCOVERY

11. Being served herewith are Plaintiff's Request for Disclosure, Plaintiff's First Request for Admissions, and Plaintiff's First Request for Production. In accordance with the TRCP, Defendant should respond fifty (50) days after the service of Plaintiff's Discovery Requests.

V. PRAYER

12. WHEREFORE, premises considered, Plaintiff **AMERICAN EXPRESS CENTURION BANK** prays that this honorable Court grant judgment in favor of Plaintiff against **MELISSA MCLAIN** for:

1. **\$16464.32** as the balance due on Defendant's Account;
2. costs of court;
3. post-judgment interest;
4. attorneys' fees; and
5. such other relief Plaintiff may be entitled at law or equity.

RESPECTFULLY SUBMITTED,

**MICHAEL J. ADAMS P.C.**

By: 

**MICHAEL J. ADAMS** SB#24038732

**STEVE A. JAVANDOOST** SB# 24055735

**300 E. SONTERRA BLVD, BLDG 1, STE 1200**

**SAN ANTONIO, TEXAS 78258**

**Toll Free Tel (877) 223-5462/Toll Free Fax (877) 240-5467**

**ATTORNEYS FOR PLAINTIFF**

FILED

2011 NOV 18 PM 1:41

*Stan J. Adams*  
COUNTY CLERK  
HARRIS COUNTY, TEXAS

CAUSE NO.

AMERICAN EXPRESS CENTURION  
BANK  
Plaintiff

vs.

MELISSA MCLAIN

Defendant(s)

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IN THE COUNTY COURT

AT LAW \_\_\_\_

HARRIS COUNTY, TEXAS

**PLAINTIFF'S REQUEST FOR DISCLOSURE, ADMISSIONS,  
AND PRODUCTION OF DOCUMENTS**

PLAINTIFF HEREBY REQUESTS THAT YOU RESPOND  
IN ACCORDANCE WITH THE TEXAS RULES OF CIVIL  
PROCEDURE TO THE FOLLOWING DISCOVERY  
WITHIN FIFTY (50) DAYS OF SERVICE.

**I. REQUEST FOR DISCLOSURE**

Under TRCP 194, Plaintiff hereby requests that Defendant(s) disclose within FIFTY (50)  
days the information listed in TRCP 194(a) – (l).

**II. PLAINTIFF'S FIRST REQUEST FOR ADMISSIONS**

Under TRCP 198 and the Instructions (Section I) and Definitions (Section II) below,  
Plaintiff hereby serves its Request for Admissions ("Request"), as follows:

**A. Instructions**

1. You must respond in writing within FIFTY (50) days after the service of this  
Request by serving your answers on Plaintiff's counsel of record.
2. You must specifically admit or deny each request or explain in detail the reasons  
that You cannot admit or deny the request.
3. Each response must fairly meet the substance of the request, and each request is  
considered admitted without the necessity of a court order unless a timely response is served on  
Plaintiff's counsel of record.

Plaintiff's Original Petition

MJAPC 11940.001

**B. Definitions**

The following definitions apply to Plaintiff's Request for Admissions, as follows:

1. **Account** means **AMERICAN EXPRESS CENTURION BANK's** account in the name of **MELISSA MCLAIN** that ends in the last four numbers \*\*\*\*\* **1007** and is the subject of the Case.
2. **Case** means the above-captioned matter.
3. **Defendant(s)** means **MELISSA MCLAIN** his/her/their successors, predecessors, divisions, subsidiaries, present and former officers, agents, employees, and all other persons acting on his/her/their behalf.
4. **Plaintiff** means **AMERICAN EXPRESS CENTURION BANK**, its successors, predecessors, divisions, subsidiaries, present and former officers, agents, employees, and all other persons acting on its behalf.
5. **You or Your** means Defendant(s) as defined above.
4. Where it does not introduce ambiguity, the plural includes the singular, and the plural includes the singular.
7. Where it does not introduce ambiguity, the feminine includes the masculine, and masculine includes the feminine.

**C. Requests for Admissions**

**Request No. 1:** Admit that Plaintiff and You entered into a contract under which Plaintiff extended credit to Defendant on the Account.

**Response:**

**Request No. 2:** Admit that under the contract You agreed to repay the money loaned to You under the credit extended on the Account.

**Response:**

**Request No. 3:** Admit that You signed the application for the line of credit extended to You by Plaintiff for the Account.

**Response:**

**Request No. 4:** Admit that Plaintiff in fact extended credit to You on the Account.

**Response:**

**Request No. 5:** Admit that You used or otherwise authorized the use of the credit to purchase goods and/or services or for cash advances from Plaintiff.

**Response:**

**Request No. 6:** Admit that Plaintiff either performed all its obligations or was otherwise excused from performing its obligations under the contract.

**Response:**

**Request No. 7:** Admit that You received periodic account statements for the purchase of goods and/or services or for cash advances.

**Response:**

**Request No. 8:** Admit that You did not dispute the charges on the itemized statements referenced in Request No. 7 in the time allowed under either the card agreement or applicable law.

**Response:**

**Request No. 9:** Admit that You failed to repay the money loan under the credit that was extended on the Account.

**Response:**

**Request No. 10:** Admit that the interest charged under the contract for the Account was allowed by the applicable law.

**Response:**

**Request No. 11:** Admit that the balance due and owing to Plaintiff by You on the Account after all offsets, payments, claims, and credits is at least **\$16464.32**.

**Response:**

**Request No. 12:** Admit that the claim(s) asserted by Plaintiff in the Case is/are not barred by the applicable statute of limitation.

**Response:**

**Request No. 13:** Admit that Plaintiff's claims are not barred by any affirmative defense.

**Response:**

**Request No. 14:** Admit that Plaintiff presented to You demand for payment of the outstanding balance on the Account more than thirty (30) days prior to the filing of the Case.

**Response:**

**Request No. 15:** Admit that You received all appropriate pre-suit notice as required by the applicable law.

**Response:**

**Request No. 16:** Admit that you consent to the entry of judgment against You in favor of Plaintiff in the amount of **\$16464.32**.

**Response:**

**Request No. 17:** Admit that this Court maintains subject matter jurisdiction over the claims Plaintiff asserts against You in the Case

**Response:**

**Request No. 18:** Admit that this Court maintains personal jurisdiction over you.

**Response:**

**Request No. 19:** Admit that venue is proper in this Court for the Case.

**Response:**

**Request No. 20:** Admit that Your nonpayment of the Account and breach of contract with Plaintiff, led Plaintiff to retain the services of the undersigned law firm.

**Response:**

### **III. PLAINTIFF'S FIRST REQUEST FOR PRODUCTION**

Under Texas Civil Procedure 196 and the Instructions and Definitions below, Plaintiff hereby serves its First Request for Production of Documents on Defendant(s), as follows:

#### **A. Instructions**

1. You must produce all requested Documents as they are kept in the ordinary course of business or organized and labeled to correspond with the categories in each request.
2. You must serve a written response to Plaintiff's counsel of record within FIFTY (50) days after service of these Requests.
3. You must make all requested Documents available for copying at Michael J. Adams P.C., 300 E. Sonterra Blvd., Bldg.1, Suite 1200, San Antonio, TX 78258.

#### **B. Definitions**

1. **Account** means AMERICAN EXPRESS CENTURION BANK's account in the name of MELISSA MCLAIN that ends in the last four numbers \*\*\*\*\* 1007 and is the subject of the Case.
2. **Case** means the above-captioned matter.
3. **Communication** means any oral or written transmission of information.

4. **Defendant(s)** means **MELISSA MCLAIN** his/her/their successors, predecessors, divisions, subsidiaries, present and former officers, agents, employees, and all other persons acting on his/her/their behalf.

5. **Document** means the same and as broad as under TRCP 196.

6. **Plaintiff** means **AMERICAN EXPRESS CENTURION BANK**, its successors, predecessors, divisions, subsidiaries, present and former officers, agents, employees, and all other persons acting on its behalf.

7. **Possession, custody, or control** means the same as it is used under TRCP 196.

8. **You or Your** means Defendant(s) as defined above.

9. Where it does not introduce ambiguity, the plural includes the singular, and the plural includes the singular.

10. Where it does not introduce ambiguity, the feminine includes the masculine, and masculine includes the feminine.

### **C. Request for Production of Documents**

**Request 1:** Each Communications between Plaintiff and You.

**Response:**

**Request 2:** Each Document in Your possession, custody, or control relating to the Account.

**Response:**

**Request 3:** Each Document in Your possession, custody, or control relating to Plaintiff's claims in the Case.

**Response:**

**Request 4:** Each Document received by You from Plaintiff.

**Response:**

**Request 5:** Each Document received by You relating to Plaintiff.

**Response:**

**Request 6:** Each communication regardless of form between You and any third party relating to the Account.

**Response:**

**Request 7:** All Documents that you intend to offer as a trial exhibit.

**Response:**

**Request 8:** Each Document relating to Your denial of Plaintiff's claims.

**Response:**

**Request 9:** Each billing statement and/or document evidencing use of the Account received by Defendant.

**Response:**

**Request 10:** Each Document relating to each (if any) affirmative defense asserted by You.

**Response:**

**Request 11:** Each Document relating to each counterclaim (if any) asserted by You.

**Response:**

**Request 12:** If you are asserting a claim for attorneys' fees (regardless of the basis), the retention agreement between You and Your attorney.

**Response:**

**Request 13:** If you are asserting a claim for attorneys' fees (regardless of the basis), the billing statements relating to the amount of attorneys' fees sought.

**Response:**

RESPECTFULLY SUBMITTED,

**MICHAEL J. ADAMS P.C.**

By: 

**MICHAEL J. ADAMS SB#24038732**

**STEVE A. JAVANDOOST SB# 24055735**

**300 E. SONTERRA BLVD, BLDG 1, STE 1200**

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IN THE COUNTY COURT

AT LAW

HARRIS COUNTY, TEXAS

AFFIDAVIT OF NON-MILITARY STATUS

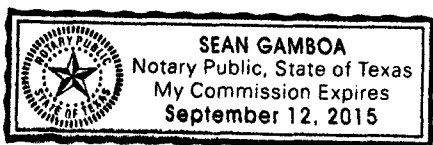
BEFORE ME, the undersigned authority on this day personally appeared Michael I. Adams/Steve A Javandoost, who swore under oath that the following facts are true:

"The undersigned is capable of making this affidavit and states that the Defendant(s) is/are not now in military service or on active duty in a foreign country as defined in the Servicemembers Civil Relief Act with amendments, pursuant to information obtained from the Department of Defense; see attached Military Status Report."

By:

MICHAEL J. ADAMS SB#24038732.  
STEVE A. JAVANDOOST SB#24055735

SIGNED AND SWORN TO before me on OCT 27, 2011.



[Signature]  
Notary Public State of Texas

Plaintiff's Original Petition

MJAPC 11940.001

Department of Defense Manpower Data Center

Oct-27-2011 09:53:45

Military Status Report  
Pursuant to the Service Members Civil Relief Act

Last Name	First/Middle	Begin Date	Active Duty Status	Active Duty End Date	Service Agency
MCLAIN	MELISSA	Based on the information you have furnished, the DMDC does not possess any information indicating the individual status.			

Upon searching the information data banks of the Department of Defense Manpower Data Center, based on the information that you provided, the above is the current status of the individual as to all branches of the Uniformed Services (Army, Navy, Marine Corps, Air Force, NOAA, Public Health, and Coast Guard).

Mary M. Snavelly-Dixon, Director  
Department of Defense - Manpower Data Center  
1600 Wilson Blvd., Suite 400  
Arlington, VA 22209-2593

The Defense Manpower Data Center (DMDC) is an organization of the Department of Defense that maintains the Defense Enrollment and Eligibility Reporting System (DEERS) database which is the official source of data on eligibility for military medical care and other eligibility systems.

The DoD strongly supports the enforcement of the Service Members Civil Relief Act (50 USC App. §§ 501 et seq. as amended) (SCRA) (formerly known as the Soldiers' and Sailors' Civil Relief Act of 1940). DMDC has issued hundreds of thousands of "does not possess any information indicating that the individual is currently on active duty" responses, and has experienced a small error rate. In the event the individual referenced above, or any family member, friend, or representative asserts in any manner that the individual is on active duty, or is otherwise entitled to the protections of the SCRA, you are strongly encouraged to obtain further verification of the person's status by contacting that person's Service via the "defenselink.mil" URL <http://www.defenselink.mil/taq/pis/PC09SLDR.html>. If you have evidence the person is on active duty and you fail to obtain this additional Service verification, punitive provisions of the SCRA may be invoked against you. See 50 USC App. §521(c).

If you obtain additional information about the person (e.g., an SSN, improved accuracy of DOB, a middle name), you can submit your request again at this Web site and we will provide a new certificate for that query.

This response reflects **active duty status** including date the individual was last on active duty, if it was within the preceding 367 days. For historical information, please contact the Service SCRA points-of-contact.

**More information on "Active Duty Status"**

Active duty status as reported in this certificate is defined in accordance with 10 USC § 101(d)(1) for a period of more than 30 consecutive days. In the case of a member of the National Guard, includes service under a call to active service authorized by the President or the Secretary of Defense for a period of more than 30 consecutive days under 32 USC § 502(f) for purposes of responding to a national emergency declared by the President and supported by Federal funds. All Active Guard Reserve (AGR) members must be assigned against an authorized mobilization position in the unit they support. This includes Navy TARs, Marine Corps ARs and Coast Guard RPAs. Active Duty status also applies to a Uniformed Service member who is an active duty commissioned officer of the U.S. Public Health Service or the National Oceanic and Atmospheric Administration (NOAA Commissioned Corps) for a period of more than 30 consecutive days.

**Coverage Under the SCRA is Broader in Some Cases**

Coverage under the SCRA is broader in some cases and includes some categories of persons on active duty for purposes of the SCRA who would not be reported as on Active Duty under this certificate.

Many times orders are amended to extend the period of active duty, which would extend SCRA protections. Persons seeking to rely on this website certification should check to make sure the orders on which SCRA protections are based have not been amended to extend the inclusive dates of service. Furthermore, some protections of the SCRA may extend to persons who have received orders to report for active duty or to be inducted, but who have not actually begun active duty or actually reported for induction. The Last Date on Active Duty entry is important because a number of protections of SCRA extend beyond the last dates of active duty.

Those who would rely on this certificate are urged to seek qualified legal counsel to ensure that all rights guaranteed to Service members under the SCRA are protected.

WARNING: This certificate was provided based on a name and SSN provided by the requester. Providing an erroneous name or SSN will cause an erroneous certificate to be provided.

Report ID:8NFAMD5DIM