

CAUSE NO. 268100052285

AMERICAN EXPRESS NATIONAL BANK § IN THE JUSTICE COURTS
Plaintiff §
§
§
§
vs. § OF HARRIS COUNTY, TEXAS
§
§
DIANA FITZGERALD §
a/k/a DIANA P FITZGERALD §
Defendant §
§
§
§ PRECINCT 8 PLACE 1

PLAINTIFF'S ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

Plaintiff, AMERICAN EXPRESS NATIONAL BANK f/k/a AMERICAN EXPRESS CENTURION BANK¹ complains of Defendant DIANA FITZGERALD a/k/a DIANA P FITZGERALD and would respectfully show the following:

PARTIES

Plaintiff, AMERICAN EXPRESS NATIONAL BANK f/k/a AMERICAN EXPRESS CENTURION BANK¹ is a national bank organized under the laws of the United States of America with its offices located at 115 W. Towne Ridge Parkway, Sandy, Utah 84070. Plaintiff may be contacted through its undersigned attorney of record.

Defendant Diana Fitzgerald a/k/a Diana P Fitzgerald, is an individual and may be served by citation at 250 El Dorado Blvd Unit 136, Webster, TX 77598.

¹ On April 1, 2018 American Express Centurion Bank changed its name to American Express National Bank and American Express Bank FSB, merged with American Express National Bank with American Express National Bank as the surviving entity after the merger. See, <https://www.occ.treas.gov/topics/licensing/interpretations-and-actions/2018/interpretations-and-actions-jan-2018.html>. See also, 12 U.S.C. § 35; 12 CFR 5.24 and 12 U.S.C. § 1828 et seq.

VENUE

Venue of this action is proper in the county named above because Defendant is an individual believed to be residing in said county at the time of commencement of suit.

AMOUNT IN CONTROVERSY

The amount in controversy is within the jurisdictional limits of this court, including actual damages, interest, and costs of court.

FACTS

The Blue Cash Everyday from American Express Card Account

American Express ("the Issuer") issued a Blue Cash Everyday from American Express in Defendant's name under its account number XXXX-XXXXXX-X7004 on August 1, 2003. Defendant received and used (or authorized the use of) the card and thereby became obligated to pay for the charges incurred with this credit card.

On or about thirty (30) days after August 9, 2025 Defendant defaulted on the obligation to make monthly payments on the credit card account. The entire balance on the credit card account is presently due and payable in full.

Defendant is presently indebted to Plaintiff in the amount of \$18,234.50. Plaintiff seeks judgment for such sums.

BREACH OF CONTRACT

The issuance of a credit card constitutes the offer of a contract. Even in the absence of such an agreement the issuance of a credit card constitutes an offer of credit and the use of credit card constitutes the acceptance of the offer of credit. See Texas Business and Commerce Code, §26.02(a)(2)(A), *Winchek v. Am. Express Travel Related Servs. Co.*, 232 S.W.3d 197, 204 (Tex.

App.—Houston [1st Dist] 2007, no pet.).

By using and/or authorizing the use of the credit cards at issue Defendant accepted the contracts with Plaintiff and became bound to pay for all charges incurred with the credit cards. Defendant also became subject to all of the terms and conditions of Plaintiff's cardholder agreements.

Plaintiff sent to Defendant monthly billing statements reflecting, *inter alia*, all charges incurred with the credit cards, the monthly payment due, and the total balance due. To the best of Plaintiff's knowledge and belief Defendant did not ever send to Plaintiff any written disputes of the monthly billing statements or the charges reflected thereon. Defendant was contractually required to submit any disputes of the charges set forth in such statements, in writing, within sixty (60) days from the date of the statements. Defendant's failure to submit such disputes constitutes an admission of the account balances.

ACCOUNT STATED

Plaintiff asserts that Defendant's use of the credit cards to purchase goods and services represented periodic accounts, for which the Issuer generated regular monthly statements. Defendant is liable to Plaintiff for the account balances, together with interest thereon at the rate allowed by law. *See Neil v. Agrus*, 693 S.W.2d 604 (Tex. App.—Houston [14th Dist.] 1985, no writ), and *Magnuson v. Citibank (South Dakota) N.A.*, 2-06-465-CV (Tex. App.—Fort Worth 2nd Dist. 2008).

CONDITIONS PRECEDENT

Through its undersigned attorney Plaintiff has demanded payment from Defendant, but Defendant has not satisfied such demand. Plaintiff has performed all conditions precedent to the filing of this action, or all such conditions precedent have occurred.

WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that Defendant be summoned to appear and answer, and that upon final hearing, Plaintiff have judgment against Defendant for:

- a. \$18,234.50, which is the balance due on the credit cards as of the date of Plaintiff's filing of this Petition;
- b. all costs of court; and
- c. all such other and further relief to which Plaintiff may be justly entitled, both in equity and in law.

Respectfully submitted By:



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Blue Cash Everyday® from American Express

DIANA P FITZGERALD
Closing Date 10/17/25
Account Ending █ 7004

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Customer Care: 1-888-258-3741
TTY: Use Relay 711
Website: americanexpress.com

New Balance	\$18,234.50
Minimum Payment Due	\$2,028.74
Includes the past due amount of \$1,278.41	
Payment Due Date	11/12/25

Late Payment Warning: If we do not receive your Minimum Payment Due by the Payment Due Date of 11/12/25, you may have to pay a late fee of up to \$40.00 and your APRs may be increased to the Penalty APR of 29.99%.

Minimum Payment Warning: If you have a Non-Plan Balance and make only the minimum payment each period, you will pay more in interest and it will take you longer to pay off your Non-Plan Balance. For example:

If you make no additional charges and each month you pay...	You will pay off the balance shown on this statement in about...	And you will pay an estimated total of...
Only the Minimum Payment Due	23 years	\$37,744

If you would like information about credit counseling services, call 1-888-733-4139.

→ See page 2 for important information about your account.

⚠ Your account is past due.

→ Please refer to the **IMPORTANT NOTICES** section for any changes to your Account terms and any other communications.

Get cash back for eligible purchases when you use the Card.

For more details about Rewards, please visit americanexpress.com/cashbackrewards

Account Summary

Previous Balance	\$17,927.35
Payments/Credits	-\$0.00
New Charges	+\$0.00
Fees	+\$40.00
Interest Charged	+\$267.15

New Balance	\$18,234.50
Minimum Payment Due	\$2,028.74

Credit Limit	\$9,900.00
Cash Advance Limit	\$0.00

↓ Please fold on the perforation below, detach and return with your payment ↓



Payment Coupon

Do not staple or use paper clips



Pay by Computer

americanexpress.com/pbc



Pay by Phone

1-800-472-9297

Account Ending █ 7004

Enter 15 digit account # on all payments.
Make check payable to American Express.

DIANA P FITZGERALD
250 EL DORADO BLVD
UNIT 136
WEBSTER TX 77598

Payment Due Date
11/12/25

New Balance
\$18,234.50

Minimum Payment Due
\$2,028.74



AMERICAN EXPRESS
PO BOX 6031
CAROL STREAM IL 60197-6031

\$ _____ • _____
Amount Enclosed

See reverse side for instructions
on how to update your address,
phone number, or email.

DIANA P FITZGERALD

Account Ending █ 7004

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Payments: Your payment must be sent to the payment address shown on your statement and must be received by 5 p.m. local time at that address to be credited as of the day it is received. Payments we receive after 5 p.m. will not be credited to your Account until the next day. Payments must also: (1) include the remittance coupon from your statement; (2) be made with a single check drawn on a US bank and payable in US dollars, or with a negotiable instrument payable in US dollars and clearable through the US banking system; and (3) include your Account number. If your payment does not meet all of the above requirements, crediting may be delayed and you may incur late payment fees and additional interest charges. Electronic payments must be made through an electronic payment method payable in US dollars and clearable through the US banking system. Please do not send post-dated checks as they will be deposited upon receipt. Any restrictive language on a payment we accept will have no effect on us without our express prior written approval. We will re-present to your financial institution any payment that is returned unpaid.

Permission for Electronic Withdrawal: (1) When you send a check for payment, you give us permission to electronically withdraw your payment from your deposit or other asset account. We will process checks electronically by transmitting the amount of the check, routing number, account number and check serial number to your financial institution, unless the check is not processable electronically or a less costly process is available. When we process your check electronically, your payment may be withdrawn from your deposit or other asset account as soon as the same day we receive your check, and you will not receive that cancelled check with your deposit or other asset account statement. If we cannot collect the funds electronically we may issue a draft against your deposit or other asset account for the amount of the check. (2) By using Pay By Computer, Pay By Phone or any other electronic payment service of ours, you give us permission to electronically withdraw funds from the deposit or other asset account you specify in the amount you request. Payments using such services of ours received after 8:00 p.m. MST may not be credited until the next day.

How We Calculate Your Balance: We use the Average Daily Balance (ADB) method (including new transactions) to calculate the balance on which we charge interest on your Account. Call the Customer Care number on page 3 for more information about this balance computation method and how resulting interest charges are determined. *The method we use to figure the ADB and interest results in daily compounding of interest.*

Paying Interest: Your due date is at least 25 days after the close of each billing period. We will not charge you interest on your purchases if you pay each month your entire balance (or Adjusted Balance if applicable) by the due date each month. We will charge you interest on cash advances and (unless otherwise disclosed) balance transfers beginning on the transaction date.

Foreign Currency Charges: If you make a Charge in a foreign currency, we will convert it into US dollars on the date we or our agents process it. **We will charge a fee of 2.70% of the converted US dollar amount.** We will choose a conversion rate that is acceptable to us for that date, unless a particular rate is required by law. The conversion rate we use is no more than the highest official rate published by a government agency or the highest interbank rate we identify from customary banking sources on the conversion date or the prior business day. This rate may differ from rates in effect on the date of your charge. Charges converted by establishments (such as airlines) will be billed at the rates such establishments use.

Credit Balance: A credit balance (designated CR) shown on this statement

represents money owed to you. If within the six-month period following the date of the first statement indicating the credit balance you do not request a refund or charge enough to use up the credit balance, we will send you a check for the credit balance within 30 days if the amount is \$1.00 or more.

Credit Reporting: We may report information about your Account to credit bureaus. Late payments, missed payments, or other defaults on your Account may be reflected in your credit report.

What To Do If You Think You Find A Mistake On Your Statement

If you think there is an error on your statement, write to us at: American Express, PO Box 981535, El Paso TX 79998-1535

You may also contact us on the Web: www.americanexpress.com

In your letter, give us the following information:

- **Account information:** Your name and account number.

- **Dollar amount:** The dollar amount of the suspected error.

- **Description of Problem:** If you think there is an error on your bill, describe what you believe is wrong and why you believe it is a mistake. You must contact us within 60 days after the error appeared on your statement.

You must notify us of any potential errors in writing (or electronically). You may call us, but if you do we are not required to investigate any potential errors and you may have to pay the amount in question.

While we investigate whether or not there has been an error, the following are true:

- We cannot try to collect the amount in question, or report you as delinquent on that amount.

- The charge in question may remain on your statement, and we may continue to charge you interest on that amount. But, if we determine that we made a mistake, you will not have to pay the amount in question or any interest or other fees related to that amount.

- While you do not have to pay the amount in question, you are responsible for the remainder of your balance.

- We can apply any unpaid amount against your credit limit.

Your Rights If You Are Dissatisfied With Your Credit Card Purchases

If you are dissatisfied with the goods or services that you have purchased with your credit card, and you have tried in good faith to correct the problem with the merchant, you may have the right not to pay the remaining amount due on the purchase.

To use this right, all of the following must be true:

1. The purchase must have been made in your home state or within 100 miles of your current mailing address, and the purchase price must have been more than \$50. (Note: Neither of these is necessary if your purchase was based on an advertisement we mailed to you, or if we own the company that sold you the goods or services.)

2. You must have used your credit card for the purchase. Purchases made with cash advances from an ATM or with a check that accesses your credit card account do not qualify.

3. You must not yet have fully paid for the purchase.

If all of the criteria above are met and you are still dissatisfied with the purchase, contact us in writing or electronically at:

American Express, PO Box 981535, El Paso TX 79998-1535

www.americanexpress.com

While we investigate, the same rules apply to the disputed amount as discussed above. After we finish our investigation, we will tell you our decision. At that point, if we think you owe an amount and you do not pay we may report you as delinquent.

Pay Your Bill with AutoPay

Deduct your payment from your bank account automatically each month.

- Avoid late fees
- Save time

Visit americanexpress.com/autopay today to enroll.

For information on how we protect your privacy and to set your communication and privacy choices, please visit www.americanexpress.com/privacy.

Change of Address, phone number, email

- Online at www.americanexpress.com/updatecontactinfo
- Via mobile device
- Voice automated: call the number on the back of your card
- For name, company name, and foreign address or phone changes, please call Customer Care

Please do not add any written communication or address change on this stub



Blue Cash Everyday® from American Express

DIANA P FITZGERALD
Closing Date 10/17/25

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Customer Care & Billing Inquiries
International Collect
Cash Advance at ATMs Inquiries
Large Print & Braille Statements

1-888-258-3741
1-336-393-1111
1-800-CASH-NOW
1-888-258-3741

Hearing Impaired
Online chat at americanexpress.com or use **Relay dial 711** and **1-888-258-3741**

Website: americanexpress.com
Customer Care & Billing Inquiries
P.O. BOX 981535
EL PASO, TX
79998-1535
Payments
PO BOX 6031
CAROL STREAM IL
60197-6031

Fees

	Amount
10/12/25 Late Payment Fee	\$40.00
Total Fees for this Period	\$40.00

Interest Charged

	Amount
10/17/25 Interest Charge on Purchases	\$267.15
Total Interest Charged for this Period	\$267.15

About Trailing Interest

You may see interest on your next statement even if you pay the new balance in full and on time and make no new charges. This is called "trailing interest". Trailing interest is the interest charged when, for example, you didn't pay your previous balance in full. When that happens, we charge interest from the first day of the billing period until we receive your payment in full. You can avoid paying interest on purchases by paying your balance in full (or if you have a Plan balance, by paying your Adjusted Balance on your billing statement) by the due date each month. Please see the "When we charge interest" sub-section in your Cardmember Agreement for details.

2025 Fees and Interest Totals Year-to-Date

	Amount
Total Fees in 2025	\$156.00
Total Interest in 2025	\$640.17

Interest Charge Calculation

Days in Billing Period: 30

Your Annual Percentage Rate (APR) is the annual interest rate on your account.

Variable APRs will not exceed 29.99%.

	Transactions Dated	Annual Percentage Rate	Balance Subject to Interest Rate	Interest Charge
	From	To		
Purchases	08/06/2025		17.99% (v)	\$16,803.45
Purchases	10/07/2023	08/05/2025	17.99% (v)	\$1,259.30
Cash Advances	08/06/2025		29.24% (v)	\$0.00
Total				\$267.15
(v) Variable Rate				

DIANA P FITZGERALD

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DIANA P FITZGERALD

Closing Date 10/17/25

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IMPORTANT NOTICES

Notice of Important Changes to Your Card Member Agreement

We are making changes to your American Express Card Member Agreement (*Agreement*) for the Account referenced with this notice. We encourage you to read this notice, share it with Additional Card Members on your Account, and file it for future reference. Any terms and conditions in the Agreement conflicting with these changes are completely replaced. Please visit www.americanexpress.com or call the number on the back of your Card to request a copy of the updated Agreement or if you have any questions.

Summary of Changes, Effective October 8, 2025	
Penalty APR and When it Applies	We are clarifying the <i>Penalty APR and When it Applies</i> section on page 1 of Part 1 of the Agreement. In addition, we are moving any relevant information from the section <i>Penalty APR for new transactions</i> to this section.
Penalty APR for new transactions	We are deleting the <i>Penalty APR for new transactions</i> section from page 2 of Part 1 and moving any relevant information from this section to the <i>Penalty APR and When it Applies</i> section on page 1 of Part 1 of the Agreement.
Words we use in the Agreement	We are renaming the section <i>Words we use in the Agreement to Definitions</i> and modifying some defined terms in Part 2 of the Agreement including, but not limited to: (a) updating the definition of "Basic or Primary Card Member"; and (b) adding a definition of "Closing Date".
Other changes	We are reorganizing and simplifying existing language in your Card Member Agreement. These changes do not affect the way your Account works.

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DIANA P FITZGERALD

Closing Date 10/17/25

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IMPORTANT NOTICES continued

EFT Error Resolution Notice

In Case of Errors or Questions About Your Electronic Transfers Telephone us at 1-800-IPAY-AXP for Pay By Phone questions, at 1-800-528-2122 for Pay By Computer questions, and at 1-800-528-4800 for AutoPay questions. You may also write us at American Express, Electronic Funds Services, P.O. Box 981531, El Paso TX 79998-1531, or contact us online at www.americanexpress.com/inquirycenter as soon as you can, if you think your statement or receipt is wrong or if you need more information about a transfer on the statement or receipt. We must hear from you no later than 60 days after we sent you the FIRST statement on which the error or problem appeared.

1. Tell us your name and account number (if any).
2. Describe the error or the transfer you are unsure about, and explain as clearly as you can why you believe it is an error or why you need more information.
3. Tell us the dollar amount of the suspected error.

We will investigate your complaint and will correct any error promptly. If we take more than 10 business days to do this, we will credit your account for the amount you think is in error, so that you will have the use of the money during the time it takes us to complete our investigation.