

1 **LAW OFFICES OF JOHN BENEDICT**

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9 Attorney for Plaintiff FLEMMING KRISTENSEN

10 **IN THE UNITED STATES DISTRICT COURT**
11 **DISTRICT OF NEVADA**

12 FLEMMING KRISTENSEN, individually and
13 on behalf of a class of similarly situated
14 individuals,

15 Plaintiff,

16 v.

17 CREDIT PAYMENT SERVICES INC., a
18 Nevada corporation, f/k/a
19 MYCASHNOW.COM INC.,

20 Defendant.

Case No.

CLASS ACTION COMPLAINT

DEMAND FOR JURY TRIAL

21 **CLASS ACTION COMPLAINT**

22 Plaintiff Flemming Kristensen (“Plaintiff” or “Kristensen”) brings this class action
23 complaint against Defendant Credit Payment Services Inc. f/k/a MyCashNow.com Inc.

24 (“Defendant” or “CPS”) to stop Defendant’s practice of making unsolicited text message
25 calls to cellular telephones, and to obtain redress for all persons injured by its conduct.

26 Plaintiff, for his class action complaint, alleges as follows upon personal knowledge as to
27 himself and his own acts and experiences, and, as to all other matters, upon information and
28 belief, including investigation conducted by his attorneys.

NATURE OF THE CASE

1
2 1. Wireless spam is a growing problem in the United States. According to a
3 recent study conducted by the Pew Research Center, “Spam isn’t just for email anymore; it
4 comes in the form of unwanted text messages of all kinds—from coupons to phishing
5 schemes—sent directly to user’s cell phones.” In fact, “57% of adults with cell phones have
6 received unwanted or spam text messages on their phone.” Amanda Lenhart, Cell Phones
7 and American Adults: They Make Just as Many Calls, but Text Less than Teens, Pew
8 Research Center (2010) at <http://pewinternet.org/Reports/2010/Cell-Phones-and-American-Adults.aspx>.

9
10 2. In one such effort to promote its short-term or payday loan services, CPS, a
11 self-described “service provider for the non-bank financial industry,” engaged in an
12 especially pernicious form of marketing: the unauthorized transmission of advertisements in
13 the form of “text message” calls to the cellular telephones of consumers throughout the
14 nation.

15 3. By effectuating these unauthorized text message calls (hereinafter, “wireless
16 spam”), Defendant has caused consumers actual harm, not only because consumers were
17 subjected to the aggravation that necessarily accompanies wireless spam, but also because
18 consumers frequently have to pay their cell phone service providers for the receipt of such
19 wireless spam.

20 4. In order to redress these injuries, Plaintiff, on behalf of himself and a
21 nationwide class of similarly situated individuals, brings suit under the Telephone Consumer
22 Protection Act, 47 U.S.C. § 227, *et seq.* (“TCPA”), which prohibits unsolicited voice and text
23 calls to cell phones.

24 5. On behalf of the class, Plaintiff seeks an injunction requiring Defendant to
25 cease all wireless spam activities and an award of statutory damages to the class members,
26 together with costs and reasonable attorneys’ fees.

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PARTIES

6. Plaintiff is a resident of New York.

7. Defendant CPS is a Nevada corporation that provides payday loans to consumers throughout the nation. As the predecessor of and successor in interest to MyCashNow.com Inc., Defendant does business throughout the United States, including this district.

JURISDICTION & VENUE

8. The Court has subject-matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 because this action arises under the laws of the United States, specifically the Telephone Consumer Protection Act, 47 U.S.C. § 227.

9. This Court has personal jurisdiction over the Defendant because Defendant is a Nevada corporation.

10. Venue is proper in this district pursuant to 28 U.S.C. § 1391(a) because Defendant resides in this district and/or a substantial part of the events concerning the wireless spam at issue occurred in this district.

COMMON ALLEGATIONS OF FACT

11. In recent years, marketers who often have felt stymied by federal laws limiting solicitation by telephone, facsimile machine, and e-mail have increasingly looked to alternative technologies through which to send bulk solicitations cheaply.

12. One of the newest types of such bulk marketing is to advertise through Short Message Services. The term “Short Message Service” or “SMS” is a messaging system that allows cellular telephone subscribers to use their cellular telephones to send and receive short text messages, usually limited to 160 characters.

13. An “SMS message” is a text message call directed to a wireless device through the use of the telephone number assigned to the device. When an SMS message call is successfully made, the recipient’s cell phone rings, alerting him or her that a call is being received. As cellular telephones are inherently mobile and are frequently carried on their owners’ person, calls to cellular telephones, including SMS messages, may be received by

1 the called party virtually anywhere worldwide.

2 14. Unlike more conventional advertisements, wireless spam can actually cost its
3 recipients money because cell phone users must frequently pay their respective wireless
4 service providers either for each text message call they receive, or incur a usage allocation
5 deduction to their text plan, regardless of whether or not the message is authorized.

6 15. Over the course of an extended period beginning in at least 2011, Defendant
7 directed the mass transmission of wireless spam to the cell phones nationwide of what it
8 hoped were potential customers of its payday loan products.

9 16. For instance, on or about December 6, 2011, Plaintiff's cell phone rang,
10 indicating that a text call was being received.

11 17. The "from" field of such transmission was identified as "13305646316",
12 which is a dedicated telephone number operated by Defendant's agents that transmits text
13 messages *en masse* through devices known as modem banks and/or carrier gateways. The
14 body of such text message read:

15 DO YOU NEED UP TO \$5000 TODAY? EASY QUICK
16 AND ALL ONLINE AT: WWW.LEND5K.COM
17 24 MONTH REPAY, ALL CREDIT OK
18 REPLY STOP 2 END

19 18. The website contained in the above text message, as well as the website to
20 which it automatically redirects,¹ are owned and operated by Defendant and/or its agents and
21 further promotes Defendant's payday loan products.

22 19. Indeed, when such website is visited, consumers are presented with the
23 opportunity to "Borrow up to \$5,000" and obtain "online approval in seconds." When a loan
24 is applied for and approved, the truth in lending portion of the loan agreement identifies
25 Defendant's MyCashNow.com Inc. as the lender who charges the borrower a fee for the loan
26 in the form of annualized interest in excess of 460 percent, or Annual Percentage Rate
27 ("APR").

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¹ The website in the text message quoted in paragraph 17 redirects to the following website:
<https://thesmartcreditsolution.securelinkcorp.com>.

1 20. The use of a dedicated telephone number by Defendant and/or its agents
2 enabled Defendant's mass transmission of wireless spam to a list of cellular telephone
3 numbers.

4 21. At no time did Plaintiff consent to the receipt of the above-referenced text
5 message or any other such spam text message advertisement from Defendant.

6 **CLASS ACTION ALLEGATIONS**

7 22. Plaintiff brings this action pursuant to Federal Rule of Civil Procedure
8 23(b)(2) and Rule 23(b)(3) on behalf of himself and a class (the "Class") defined as follows:
9 all persons in the United States and its Territories who received one or more unauthorized
10 text message advertisements on behalf of Defendant.

11 23. In order to make its *en masse* transmission of text message advertisements
12 economical, Defendant used lists of thousands of consumers' cellular telephone numbers,
13 including Plaintiff's. As such, the Class consists of thousands of individuals and other
14 entities, making joinder impractical.

15 24. Plaintiff will fairly and adequately represent and protect the interests of the
16 other members of the Class. Plaintiff has retained counsel with substantial experience in
17 prosecuting complex litigation and class actions. Plaintiff and his counsel are committed to
18 vigorously prosecuting this action on behalf of the members of the Class, and have the
19 financial resources to do so. Neither Plaintiff nor his counsel has any interest adverse to
20 those of the other members of the Class.

21 25. Absent a class action, most members of the Class would find the cost of
22 litigating their claims to be prohibitive and would have no effective remedy. The class
23 treatment of common questions of law and fact is also superior to multiple individual actions
24 or piecemeal litigation in that it conserves the resources of the courts and the litigants, and
25 promotes consistency and efficiency of adjudication.

26 26. Defendant has acted and failed to act on grounds generally applicable to the
27 Plaintiff and the other members of the Class in transmitting the wireless spam at issue,
28 requiring the Court's imposition of uniform relief to ensure compatible standards of conduct

1 toward the members of the Class.

2 27. The factual and legal bases of Defendant's liability to Plaintiff and to the other
3 members of the Class are the same, resulting in injury to the Plaintiff and to all of the other
4 members of the Class as a result of the transmission of the wireless spam alleged herein.

5 Plaintiff and the other Class members have all suffered harm and damages as a result of
6 Defendant's unlawful and wrongful conduct as a result of the transmission of the wireless
7 spam.

8 28. There are many questions of law and fact common to the claims of Plaintiff
9 and the other members of the Class, and those questions predominate over any questions that
10 may affect individual members of the Class. Common questions for the Class include but are
11 not limited to the following:

- 12 (a) whether Defendant and/or its agents sent one or more text messages to
the Class members;
- 13 (b) whether the text messages sent by or on behalf of Defendant violate
14 the TCPA;
- 15 (c) whether Defendant and/or its agents used an automatic telephone
dialing system to transmit the text messages at issue;
- 16 (d) whether Defendant's conduct violated the Class members' respective
17 rights to privacy; and
- 18 (e) whether Defendant's conduct was willful such that the Class members
are entitled to treble damages.

19 **FIRST CAUSE OF ACTION**
20 **(Violation of the TCPA, 47 U.S.C. § 227, et seq.: On behalf of the Class)**

21 29. Plaintiff incorporates by reference the foregoing allegations as if fully set
22 forth herein.

23 30. Defendant made unsolicited commercial text calls, including the message
24 identified in paragraph 17, to the wireless telephone numbers of the Class. Each such text
25 message call was made using equipment that had the capacity to store or produce telephone
26 numbers to be called, using a random or sequential number generator to dial such numbers.
27 By using such equipment, Defendant was able to effectively send text messages
28 simultaneously to lists of thousands of consumers' wireless telephone numbers without

1 human intervention.

2 31. These text calls were made *en masse* through the use of a dedicated telephone
3 number and without the prior express consent of the Plaintiff and the other members of the
4 Class to receive such wireless spam.

5 32. Defendant has, therefore, violated 47 U.S.C. § 227(b)(1)(A)(iii). As a result
6 of Defendant's conduct, the members of the class suffered actual damages by having to pay
7 their respective wireless carriers for the text messages where applicable and, under section
8 227(b)(3)(B), are each entitled to, *inter alia*, a minimum of \$500.00 in damages for each
9 violation of such act.

10 33. Because Defendant had knowledge that Plaintiff and the Class did not consent
11 to the receipt of the aforementioned wireless spam, the Court should, pursuant to section 47
12 U.S.C. § 227(b)(3)(C), treble the amount of statutory damages recoverable by the Plaintiff
13 and the other members of the Class.

14 WHEREFORE, Plaintiff, on behalf of himself and the Class, prays for the following
15 relief:

- 16 1. An order certifying the Class as defined above;
- 17 2. An award of actual and/or statutory damages;
- 18 3. An injunction requiring Defendant to cease all wireless spam
19 activities;
- 20 4. An award of reasonable attorneys' fees and costs; and
- 21 5. Such further and other relief the Court deems reasonable and just.

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JURY DEMAND

Plaintiff requests trial by jury of all claims that can be so tried.

Dated: March 29, 2012

Respectfully submitted,

LAW OFFICES OF JOHN BENEDICT

By: 

John Benedict, Esq.
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Counsel for Plaintiff
FLEMMING KRISTENSEN

AO 440 (Rev. 12/09) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

District of Nevada

Flemming Kristensen

Plaintiff

v.

Credit Payment Services Inc.

Defendant

Civil Action No. 2:12-cv-00528

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) Credit Payment Services, Inc.
3315 HWY 50
P.O. Box 3540
Silver Springs, NV 89429

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:

John Benedict
Law Offices of John Benedict
2190 E. Pebble Road, #260
Las Vegas, NV 89123

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

AO 440 (Rev. 12/09) Summons in a Civil Action (Page 2)

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:

JS 44 (Rev. 12/07)

CIVIL COVER SHEET

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 THE REVERSE OF THE FORM.)

<p>I. (a) PLAINTIFFS Flemming Kristensen</p> <p>(b) County of Residence of First Listed Plaintiff _____ (EXCEPT IN U.S. PLAINTIFF CASES)</p> <p>(c) Attorney's (Firm Name, Address, and Telephone Number) John Benedict, 2190 E. Pebble Road, #260, Las Vegas, NV 89123</p>	<p>DEFENDANTS Credit Payment Services Inc., a Nevada Corporation, f/k/a MYCASHNOW.COM Inc.</p> <p>County of Residence of First Listed Defendant _____ (IN U.S. PLAINTIFF CASES ONLY)</p> <p>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.</p> <p>Attorneys (If Known)</p>
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<p>II. BASIS OF JURISDICTION (Place an "X" in One Box Only)</p> <p><input type="checkbox"/> 1 U.S. Government Plaintiff</p> <p><input type="checkbox"/> 2 U.S. Government Defendant</p> <p><input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)</p> <p><input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)</p>	<p>III. CITIZENSHIP OF PRINCIPAL PARTIES(Place an "X" in One Box for Plaintiff and One Box for Defendant)</p> <p>(For Diversity Cases Only)</p> <table style="width:100%;"> <tr> <td>Citizen of This State</td> <td><input type="checkbox"/> 1</td> <td><input type="checkbox"/> 1</td> <td>Incorporated or Principal Place of Business In This State</td> <td><input type="checkbox"/> 4</td> <td><input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td><input type="checkbox"/> 2</td> <td><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business In Another State</td> <td><input type="checkbox"/> 5</td> <td><input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td><input type="checkbox"/> 3</td> <td><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td><input type="checkbox"/> 6</td> <td><input type="checkbox"/> 6</td> </tr> </table>	Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4														
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Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6														

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

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<p>PERSONAL INJURY</p> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<p>PERSONAL INJURY</p> <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <p>PERSONAL PROPERTY</p> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other <p>LABOR</p> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act <p>IMMIGRATION</p> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <p>PROPERTY RIGHTS</p> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <p>SOCIAL SECURITY</p> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <p>FEDERAL TAX SUITS</p> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input checked="" type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS			
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 510 Motions to Vacate Sentence <p>Habeas Corpus:</p> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition			

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 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
 28: 1331 Fed. Question

Brief description of cause:

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$ 75,000.00 CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY (See instructions): JUDGE _____ DOCKET NUMBER _____

DATE 03/29/2012 SIGNATURE OF ATTORNEY OF RECORD 

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____