

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

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My Pillow, Inc.,  
a Minnesota corporation,

Civil Action No.

Plaintiff,

v.

**COMPLAINT**

LMP Worldwide, Inc.,  
a Michigan corporation

**JURY TRIAL DEMANDED**

Defendant.

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Plaintiff, My Pillow, Inc., a Minnesota corporation, by and through its undersigned attorney, and for its Complaint against Defendant LMP Worldwide, Inc., a Michigan corporation, states as follows:

**JURISDICTION AND VENUE**

1. This is an action for trademark infringement in violation of Section 32(1)(a) of the Lanham Act, 15 U.S.C. § 1114; unfair competition, false designation of origin, false representation, and false advertising in violation of section 43(a) of the Lanham Act, 15 U.S.C. § 1125; violations of the Minnesota Deceptive Trade Practices Act; and for cancellation of a trademark registration under §2(d) of the Lanham Act, 15 U.S.C. §1052(d).

2. This Court has jurisdiction under 15 U.S.C. §§ 1119 and 1121; 28 U.S.C. §§ 1331, 1332(a), 1338, and 1367.

3. Venue is proper in this district under 28 U.S.C. §§ 1391(b).

### **PARTIES**

4. Plaintiff My Pillow, Inc. (“My Pillow”) is a Minnesota corporation having a principal place of business at 343 East 82<sup>nd</sup> Street, Suite 100, Chaska, Minnesota 55318.

5. Defendant LMP Worldwide, Inc. (“LMP”) is, upon information and belief, a Michigan corporation having a principal place of business at 31028 Century Drive, Wixom, Michigan 48393.

### **BACKGROUND**


6. Night Moves Minnesota, LLC (“Night Moves”), a Minnesota limited liability company, filed an intent to use trademark application on July 1, 2004 for the word mark “MYPILLOW” for pillows in International Class 020. On January 7, 2008, Night Moves filed an allegation of use. In the allegation of use, Night Moves claimed a date of first use anywhere of October 2004 and a date of use in interstate commerce of October 2004. The trademark registered on April 8, 2008 with US Registration No. 3,410,314 (“My Pillow Trademark Registration”) for the trademark “MYPILLOW” in connection with pillows. A copy of the My Pillow Trademark Registration is attached as Exhibit 1 and is incorporated by reference.

7. On August 14, 2009, Night Moves assigned its entire interest in and to the trademark “MYPILLOW,” the My Pillow Trademark Registration, along with all goodwill associated therewith, to My Pillow.

8. My Pillow has been continuously using the MYPILLOW mark in commerce since August 14, 2009 and Night Moves had continuously used the MYPILLOW mark in commerce since 2004.

9. On April 4, 2014, a declaration of incontestability under §15 of the Trademark Act, 15 U.S.C. §1065 was accepted by the United States Patent and Trademark Office (Exhibit 2).

10. On average, My Pillow spends over a \$4,000,000 a month advertising its products sold under the trademark MYPILLOW. As a result of this substantial spending, My Pillow has grown the goodwill and recognition of the trademark MYPILLOW.

11. Mr. Mark J. Arthurs filed for and owned a trademark registration for the design mark “ *i  my pillow* ” having US Registration No. 3,492,178 in connection with pillows in International Class 020 (Exhibit 3). Arthurs claims a first use date of November 8, 2007 and an interstate commerce use date of December 20, 2007.

12. On information and belief, Mr. Arthurs is president of LMP.

13. On information and belief, LMP recorded an assignment commemorating its acquisition of the entire interest in the trademark registration having US Registration No. 3,492,178 (the “LMP Trademark Registration”) on June 9, 2016.

14. On information and belief, LMP owns at least two domain names, *www.lmpworldwide.com* and *www.ilovemypillow.com*. Each of these domain names is directed to a website that displays the LMP Trademark Registration in connection with the sale of pillows. A screenshot from the *www.ilovemypillow.com* website is attached as Exhibit 4 and is incorporated by reference.

15. LMP, without authorization from My Pillow, had been using the name “ *i ♥ my pillow* ” in commerce, including use in Minnesota and elsewhere, for marketing, promoting, and selling its products, including pillows.

16. On January 24, 2012, My Pillow sued LMP (and Mr. Arthurs) for trademark infringement and unfair competition. Prior to trial, the parties settled their disputes, the details of which were commemorated in a settlement agreement dated January 30, 2013 (hereafter, “Settlement Agreement”).

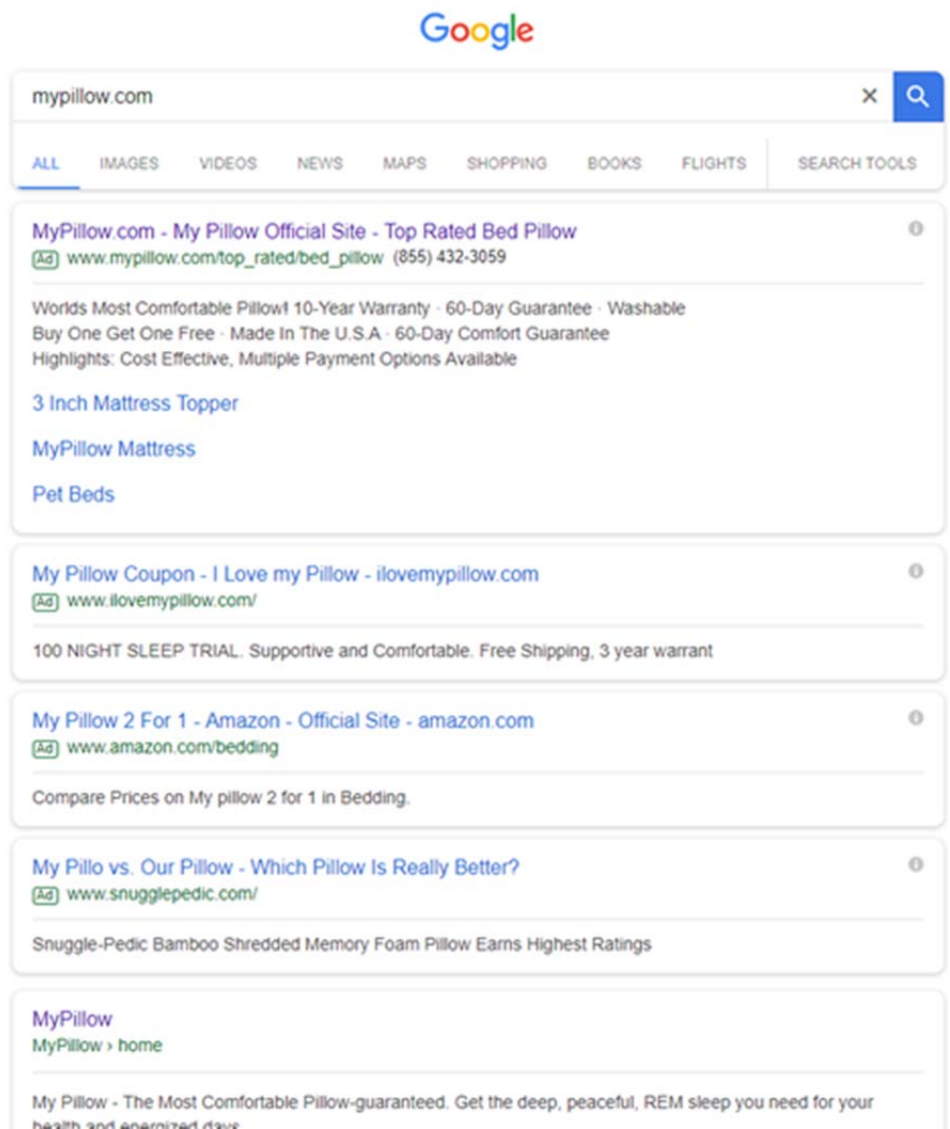
17. Since the effective date of the Settlement Agreement, LMP, through its employees and agents, have continued to use the “ *i ♥ my pillow* ” trademark contrary to the terms of the Settlement Agreement. Such use has caused, is continuing to cause, and is likely to cause confusion in the marketplace.

18. Paragraph 2.1(c) of the Settlement Agreement states “LMP shall not purchase nor use ad words (or the equivalent thereof) on any search engine for the word

“my” and “pillow,” together as one word or separate as two words, unless it is accompanied by another word or other words.”

19. Since the effective date of the Settlement Agreement, LMP, through its employees and agents, has purchased the ad words “My,” “Pillow” and “mypillow” without the accompaniment of other word(s) materially breaching the terms of the Settlement Agreement. My Pillow sent a notice of breach to counsel for LMP dated December 20, 2016. LMP claimed to have cured the material breach within the 30-day cure period by ceasing the purchase of the ad words “my” and “pillow” and “mypillow”.

20. Despite this representation, LMP has continued to purchase the ad words “my” and “pillow” and “mypillow” as late as December 2017 as is evidenced by the partial screen capture below:



(Captured December 16, 2017).

21. The  [www.ilovemypillow.com/](http://www.ilovemypillow.com/) in this screen capture indicates that this an advertisement placed for the URL *www.ilovemypillow.com* when searching *mypillow.com*.

22. Paragraph 2.1(a) of the Settlement Agreement states “LMP shall not use the My Pillow Mark or any mark confusingly similar thereto in connection with the My Pillow Goods.” Since the effective date of the Settlement Agreement, LMP, through its employees and agents, has used the words “My” and “Pillow” in connection with products sold by My Pillow, breaching the terms of the Settlement Agreement, including without limitation the above-captioned partial screen capture that advertises a “My Pillow” coupon.

23. Additionally, an employee of LMP stated in an email dated on or about December 14, 2017 to a wholesale customer that “[w]e’re confident going head to head with other pillows, especially My Pillow.”

24. Since the effective date of the Settlement Agreement, LMP, through its employees and agents, has instructed its employees to falsely quote unsubstantiated statistics regarding the customers of My Pillow and LMP. In the same email set forth in the preceding paragraph, the employee stated “I’ve been with this company for 3 years and I can’t tell you how many calls I get from customers wanting to return their My Pillow thinking we are the same. 8/10 They end up buying from us.”

25. Since the effective date of the Settlement Agreement, LMP has produced radio ads that have been broadcast using specific language designed to confuse customers of My Pillow, which constitutes unfair competition, false designation of origin, and false

representation in connection with products associated with LMP. These ads have been broadcast on radio stations within the state of Minnesota.

26. The transcript of the above-identified ad includes:

When was the last time you said, "I love."  
No really, when was the last time you said, "I love [pause] my pillow"  
We think we know why this is so difficult.  
Because your pillow sucks.  
That's right – as soon as you lay on it, it needs to be scrunched and adjusted.  
Which some pitchman convinced you is a good thing.  
And in the middle of the night, it starts all over again.  
I Love My Pillow is not a cheap infomercial pillow.  
In fact, in the last ten years, I love my pillow has only been available in the finest  
bedding shops.  
The secret to I love my pillow is in our proprietary homemade foam.  
I guarantee you will be saying "I love my pillow."  
Go to *ilovemypillow.com* and get sized to your custom-made pillow  
Handcrafted in the heart of America.  
I guarantee this pillow won't suck or your money back.  
Go to *ilovemypillow.com* and get forty percent off.  
Use promo code love for a limited time offer.

27. As shown in the transcription set forth above in paragraph 26, the following excerpts are shown to make direct and indirect inferences to My Pillow and its products, which are designed to cause confusion in the marketplace:

- a. "my pillow" is said seven times in a one-minute ad;
- b. reference is made to "some pitchman convinced you [scrunching and adjusting] is a good thing" and My Pillow has Mr. Michael Lindell explaining how to properly position and use a pillow in infomercials, commercials and in live broadcasts;



- c. reference is made to proprietary foam, a fact My Pillow advertises with its patented foam fill;
- d. reference is made to being “handcrafted in the heart of America,” which My Pillow has advertised for years;
- e. reference is made to a guarantee, which is a word used and trademarked by My Pillow; and
- f. reference is made to a money-back offer, which is an offer made by My Pillow.

28. My Pillow sent a letter to LMP providing notice of breach of the Settlement Agreement on December 20, 2017. When LMP failed to cure its breaches of the Settlement Agreement, My Pillow properly terminated the Settlement Agreement by letter dated January 23, 2018.

## **COUNT I**

### **BREACH OF SETTLEMENT AGREEMENT**

29. My Pillow realleges by reference the allegations contained in paragraphs 1 through 28 of this Complaint as if fully set forth herein.

30. My Pillow and LMP are parties to the above-identified Settlement Agreement.

31. As a condition for settlement, LMP agreed to forego purchasing ad words “my” and “pillow” and “mypillow.” LMP has, however, purchased these ad words.

32. As a condition for settlement, LMP agreed to forego using “mypillow” in connection with products sold by My Pillow. Since the effective date of the Settlement Agreement, LMP, through its employees and agents, has used the words “My” and “Pillow” in connection with products sold by My Pillow, breaching the terms of the Settlement Agreement.


33. The actions set forth above in paragraphs 31 and 32, separately and together, constitute material breaches of the Settlement Agreement. My Pillow properly terminated the Settlement Agreement because of breaches by LMP.


34. My Pillow has been damaged by LMP’s breaches of the Settlement Agreement in an amount to be proven at trial.

## **COUNT II**

### **FEDERAL TRADEMARK INFRINGEMENT UNDER SECTION 32(a) OF THE LANHAM ACT, 15 U.S.C. §1114**

35. My Pillow realleges by reference the allegations contained in paragraphs 1 through 34 of this Complaint as if fully set forth herein.

36. LMP is using the trademark “ *i  my pillow* ” in interstate commerce in a manner not consented to by My Pillow in the Settlement Agreement.

37. LMP's use of the mark “ *i  my pillow* ” is likely to cause confusion, to cause mistake, and/or to deceive purchasers as to the source of LMP's goods or as to LMP's affiliation, connection, approval or association with My Pillow.

38. LMP's actions constitute trademark infringement in violation of Section 32(a) of the Lanham Act, 15 U.S.C. § 1114.

39. LMP's trademark infringement has caused and will continue to cause My Pillow to suffer damage to its business, reputation, good will, profits, and the strength of its trademarks, and is causing ongoing irreparable harm to My Pillow for which there is no adequate remedy at law.

40. On information and belief, LMP's infringement of My Pillow's trademark is willful and deliberate.

### **COUNT III**

#### **FEDERAL UNFAIR COMPETITION AND FALSE REPRESENTATION UNDER SECTION 43(a) OF THE LANHAM ACT, 15 U.S.C. § 1125(a)**

41. My Pillow realleges by reference the allegations contained in paragraphs 1 through 40 of this Complaint as if fully set forth herein.

42. LMP is using the trademark “ *i  my pillow* ” in interstate commerce.

43. LMP purchases ad words “my” and “pillow” and “mypillow.”

44. LMP uses the “MYPILLOW” trademark when discussing false and misleading survey results.

45. LMP uses false and misleading survey results regarding pillows manufactured by My Pillow when promoting the LMP pillows.

46. LMP uses language in its radio ads similar to the words used in ads produced and aired by My Pillow.

47. LMP uses the MYPILLOW trademark in its radio ads.

48. LMP’s actions set forth in paragraphs 42 through 47, above, are actions calculated to cause confusion, to cause mistake, and/or to deceive purchasers as to the source of LMP’s goods or as to LMP’s affiliation, connection, approval or association with My Pillow.

49. LMP’s actions constitute unfair competition, false designation of origin, and false representation in connection with products distributed in interstate commerce, in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).


50. LMP’s unfair competition has caused and will continue to cause My Pillow to suffer damage to its business, reputation, good will, profits, and the strength of its trademarks, and is causing ongoing irreparable harm to My Pillow for which there is no adequate remedy at law.

51. On information and belief, LMP's actions constituting unfair competition, false designation of origin, and false representation are willful and deliberate.

**COUNT IV**

**COMMON LAW TRADEMARK INFRINGEMENT  
AND UNFAIR COMPETITION**

52. My Pillow realleges by reference the allegations contained in paragraphs 1 through 51 of this Complaint as if fully set forth herein.

53. LMP has used and continues to use the trademark “ *i  my pillow* ” to promote, market, or sell pillows in Minnesota.

54. LMP purchases ad words “my” and “pillow” and “mypillow.”

55. LMP uses the “MYPILLOW” trademark when discussing false and misleading survey results.

56. LMP uses false and misleading survey results regarding pillows manufactured by My Pillow when promoting the LMP pillows.

57. LMP uses the MYPILLOW trademark in its radio ads.

58. LMP uses language in its radio ads similar to the words used in ads produced and aired by My Pillow.

59. LMP's actions set forth in paragraphs 54 through 58, above, are actions calculated to cause confusion, to cause mistake, and/or to deceive as to the source of origin or affiliation of LMP's goods and services.

60. LMP's actions constitute trademark infringement and unfair competition under the common law.

61. My Pillow has been irreparably injured, and will continue to be irreparably injured unless the conduct of LMP is preliminarily and permanently enjoined.

62. Upon information and belief, LMP undertook the actions discussed in paragraphs 53 through 61 above willfully or with reckless intention of trading upon the good will of My Pillow.

### **COUNT V**

#### **VIOLATION OF MINNESOTA DECEPTIVE TRADE PRACTICES ACT MINN. STAT. § 325D.44**

63. My Pillow realleges by reference the allegations contained in paragraphs 1 through 62 of this Complaint as if fully set forth herein.

64. MYPILLOW is a trademark as defined in Minn. Stat. § 325D.43.

65. LMP has engaged in numerous deceptive trade practices in violation of the Minnesota Deceptive Trade Practices Act, Minn. Stat. § 325D.44, including but not limited to:

(a) Engaging in conduct that causes a likelihood of confusion or misunderstanding as to the source, sponsorship, approval or certification of LMP's products;

(b) Engaging in conduct that causes a likelihood of confusion or misunderstanding as to affiliation, connection or association between My Pillow and LMP;

(c) Disparaging the goods, services or business of My Pillow by making false or misleading representations of fact; and

(d) Using deceptive representations in connection with its products.


66. On information and belief, LMP is willfully engaged in the above-described trade practices, knowing them to be deceptive.

67. As a result of LMP's conduct, My Pillow is entitled to an injunction and attorneys' fees under Minn. Stat. § 325D.45.

## **COUNT VI**

### **CANCELLATION OF THE LMP TRADEMARK REGISTRATION**

68. My Pillow realleges by reference the allegations contained in paragraphs 1 through 67 of this Complaint as if fully set forth herein.

69. LMP has registered the trademark “ *i  my pillow* ” for use with pillows. The trademark was registered on August 26, 2008 with registration number 3,492,178.

70. This Court has authority to cancel the LMP Trademark Registration under 15 U.S.C. § 1119 (“In any action involving a registered mark the court may determine the right to registration ...”).

71. Because LMP’s use of the LMP Trademark Registration with pillows is likely to cause confusion with My Pillows trademark, and My Pillow is the senior user, the Court should order the United States Patent and Trademark Office to cancel the LMP Trademark Registration.

### **JURY DEMAND**

Plaintiff My Pillow, Inc. hereby demands a trial by jury on all issues so triable.

### **REQUEST FOR RELIEF**

WHEREFORE, Plaintiff My Pillow respectfully requests that this Honorable Court:

A. Preliminarily and permanently enjoin Defendant LMP, its agents, servants, employees, privies, successors, and assigns, and all claiming any rights through it, from manufacturing, marketing or selling products under a trademark constituting trademark infringement or unfair competition against My Pillow’s rights;

B. Order LMP to recall and surrender for destruction all products, advertisements, and other materials constituting trademark infringement or unfair competition against My Pillow’s rights;



C. Order LMP to surrender to My Pillow its domain name *www.ilovemypillow.com*;

D. Cancelling the LMP Trademark Registration;

E. Order LMP to take all steps necessary to cancel any federal, state or local business registrations, including corporate name registrations and dba filings, that include the My Pillow name or marks or amend those registrations to names that do not include the My Pillow name or marks, and to remove any references to any business registrations, including corporate names and dba filings, that include My Pillow's marks;

F. Ordering LMP, pursuant to 15 U.S.C. § 1116(a), to file with this Court and serve upon My Pillow within thirty (30) days after entry of the injunction a written report under oath describing in detail the manner and form in which LMP has complied with the injunction, including ceasing all offering of pillows under names and/or marks as set forth above;

G. Award My Pillow compensatory and exemplary damages for the Counts stated herein, including income and profits My Pillow lost and may lose in the future as a result of LMP's unlawful activities including trademark infringement and unfair competition; together with any costs;

H. Award My Pillow the profits of LMP under 15 U.S.C. §1117 for LMP's trademark infringement and unfair competition and other violations of the Lanham Act;

I. Award My Pillow any additional damages to which it is entitled for

LMP's trademark infringement, unfair competition and breach of contract;

J. Declare this case exceptional under 15 U.S.C. § 1117;

K. Award My Pillow costs and reasonable attorneys' fees under 15 U.S.C. §1117;

L. Declare that the Settlement Agreement has been properly terminated;

M. Enter judgment for My Pillow on all claims for relief asserted in the Complaint in an amount to be proven at trial;

N. Enter judgment in favor of My Pillow for pre-judgment and post-judgment interest at the legal rate;

O. Award My Pillow reasonable attorney's fees and expenses of litigation;

P. Assess all costs against LMP;

Q. Grant My Pillow any further relief that the Court deems just and equitable.

Respectfully submitted,

Dated: January 24, 2018

s/Lora M. Friedemann

Lora M. Friedemann (#0259615)

Laura L. Myers (#387116)

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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
My Pillow, Inc.,
a Minnesota corporation
(b) County of Residence of First Listed Plaintiff Carver
(c) Attorneys (Firm Name, Address, and Telephone Number)
Lora M. Friedemann and Laura L. Myers, Fredrikson & Byron, P.A.

DEFENDANTS
LMP Worldwide, Inc.,
a Michigan corporation
County of Residence of First Listed Defendant Oakland
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

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)
PTF DEF
Citizen of This State 1 1
Citizen of Another State 2 2
Citizen or Subject of a Foreign Country 3 3

IV. NATURE OF SUIT (Place an "X" in One Box Only) Click here for: Nature of Suit Code Descriptions.

Table with 4 main columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

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
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):
This Court has jurisdiction under 15 U.S.C. §§ 1119 and 1121; 28 U.S.C. §§ 1331, 1332(a), 1338, and 1367.
Brief description of cause: Breach of contract, trademark infringement, unfair competition and deceptive trade practices.

VII. REQUESTED IN COMPLAINT:
CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ money damages and injunction
JURY DEMAND: Yes No

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

DATE 01/24/2018 SIGNATURE OF ATTORNEY OF RECORD s/Lora M. Friedemann

FOR OFFICE USE ONLY
RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE