IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA

HAKEEM MEADE and MARSHALL SOOKRAM, on behalf of themselves and all others similarly situated, Plaintiffs, v. ETOH MONITORING, LLC, a Louisiana Limited Liability Company, Defendant.	No. 2:20-cv-1455 Section J Division 3 District Judge Carl J. Barbier Magistrate Judge Dana M. Douglas

PLAINTIFFS' MOTION FOR CLASS CERTIFICATION

Through their undersigned counsel, Named Plaintiffs Hakeem Meade and Marshall Sookram respectfully move that this Court certify the following class in this case:

> Every individual who, since January 1, 2017, has been ordered, steered, or permitted by Judge Paul A. Bonin to contract for or otherwise receive or pay for ankle monitoring services from ETOH Monitoring, LLC.

Named Plaintiffs also respectfully request that this Court appoint them as class representatives and appoint the Institute for Justice and Most & Associates as class counsel.

As explained in Plaintiffs' accompanying memorandum, class certification and the appointment of class representatives and class counsel are proper because:

1. Named Plaintiffs' claims satisfy Federal Rule of Civil Procedure 23(a)'s numerosity, commonality, and typicality requirements.

2. As required by Rule 23(a) and (g), Named Plaintiffs and their counsel—the Institute for Justice and Most & Associates—will adequately protect the interests of class members.

3. Named Plaintiffs' claims satisfy Rule 23(b)(2)'s requirement that Defendant ETOH Monitoring, LLC "has acted or refused to act on grounds that apply generally to the class, so that

final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole."

4. Named Plaintiffs have standing to seek relief on behalf of themselves and the class in the form of declaratory and injunctive relief, including disgorgement and cancelation of fees.

5. Named Plaintiffs' proposed class is adequately defined and clearly ascertainable. The class and its members are readily identifiable by reference to objective criteria and available documents.

For these reasons, as explained in the accompanying memorandum, the Court should grant Plaintiffs' motion for class certification, certify Plaintiffs' proposed class, appoint Plaintiffs as class representatives, and appoint Plaintiffs' counsel as class counsel.

Dated: August 20, 2021

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MEMORANDUM IN SUPPORT OF
PLAINTIFFS' MOTION FOR CLASS CERTIFICATION

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I. INTRODUCTION

Pursuant to Federal Rule of Civil Procedure 23 ("Rule 23"), and specifically Rules 23(a) and (b)(2), Plaintiffs[1] respectfully request that this Court certify the following class:

> Every individual who, since January 1, 2017, has been ordered, steered, or permitted by Judge Paul A. Bonin to contract for or otherwise receive or pay for ankle monitoring services from ETOH Monitoring, LLC.[2]

This putative class arises from the fact that, from January 2017 until he retired in December 2020, Judge Paul A. Bonin ("Judge Bonin") ordered, steered, or permitted criminal defendants in his court or their loved ones to pay up to $300 a month for ankle monitoring by Defendant ETOH Monitoring, LLC ("ETOH"), a for-profit company. While ordering defendants to ankle monitoring is part of a judge's duties, Judge Bonin's and ETOH's actions violated Named Plaintiffs' due process rights and the due process rights of dozens of other criminal defendants because of significant personal, financial, professional, and political ties between Judge Bonin and ETOH's principals—ties that neither the judge nor the company communicated at any point to the

[1] In addition to the terms defined in the text, this memorandum uses the following definitions. "Plaintiffs" means named plaintiffs Hakeem Meade and Marshall Sookram, and all others similarly situated. Mr. Meade and Mr. Sookram together will be referred to as "Named Plaintiffs." Pls.' First Am. Class Action Compl. Decl. & Inj. Relief (Rec. Doc. 7) will be referred to as "FAC." ETOH's Answer Behalf ETOH Monitoring LLC to First Am. Class Action Compl. Decl. Inj. Relief (Rec. Doc. 40) will be referred to as "ETOH Answer." The declarations of Plaintiffs' counsel William R. Maurer, Jaba Tsitsuashvili, and William Most will be referred to as "Maurer Decl.", "Tsitsuashvili Decl.", and "Most Decl.", respectively. References to the documents attached to counsel's declarations will indicate at which attachment the Court may find the document, as well as the precise location in the document where the information is located.

[2] The FAC requested certification for a class that also included those who, since January 1, 2017 "will be ordered, steered, or permitted by Judge Bonin to contract for or otherwise receive or pay for ankle monitoring services by ETOH." FAC ¶ 107. As described more fully below, since Plaintiffs filed the FAC, Judge Bonin has retired from the bench, so there is no reason for this Court to certify any class members who will be ordered, steered, or permitted by Judge Bonin to contract for or otherwise receive or pay for ankle monitoring services by ETOH.

defendants. In addition to raising the appearance of interested judicial decision-making, Judge Bonin and ETOH also manifested actual bias by having Judge Bonin act as a de facto debt collector for the company when defendants did not pay ETOH for ankle monitoring services.

Because of these due process violations, Plaintiffs filed this civil rights suit seeking injunctive and declaratory relief. Plaintiffs sought relief on behalf of at least 48 individuals who have all suffered the same injury at the hands of ETOH. Their case raises discrete factual issues and turns on a single question of law. If this Court grants the requested relief, the proposed class members' claims would be resolved in one stroke. Because this case satisfies all the requirements for certification, this Court should grant Plaintiffs' motion and certify the proposed class. In addition, pursuant to Rule 23(g), Plaintiffs request that this Court name Plaintiffs Hakeem Meade and Marshall Sookram as class representatives and appoint Plaintiffs' counsel—the Institute for Justice ("IJ") and Most & Associates—to represent the certified class.

II. BACKGROUND

Plaintiffs filed this putative Rule 23(b)(2) class action for declaratory and injunctive relief in May 2020 against Judge Bonin and ETOH. *See* FAC. Plaintiffs alleged that during Judge Bonin's term as an elected state court judge on the Orleans Parish Criminal District Court, he and ETOH operated a for-profit, fee-funded ankle monitoring system that "give[s] rise to the perception that judicial decision-making has been co-opted by the profit motive of a private company with which the judge has significant relationships, including a creditor-debtor relationship" between the law office of one of the company's principals (Leonard L. Levenson, who was also the judge's former law partner) (the creditor) and the judge's judicial election campaign (the debtor). FAC ¶ 82.

Plaintiffs alleged that Judge Bonin's and ETOH's ankle monitoring system violated due process because of the incentive, temptation, risk, or appearance that custody and liberty

determinations were based at least in part on the pecuniary interest of ETOH as an arm of Judge Bonin's court and the nonpecuniary interest of Judge Bonin as the decisionmaker, rather than based solely on defendants' threat to the community or likelihood of flight.

Plaintiffs did not allege that Judge Bonin or ETOH had a personal bias against any particular criminal defendant, but rather that the judge's and the company's relationships and conduct amounted to an institutional defect, given the incentive, temptation, risk, or appearance of interested decision-making in the operation of Judge Bonin's and ETOH's for-profit, fee-funded ankle monitoring system as a whole. *See generally* Pls.' Response in Opposition to ETOH Monitoring, LLC's Mot. J. Pleadings (Rec. Doc. 62).

Accordingly, Plaintiffs sought to certify a Rule 23(b)(2) class of: "Every individual who, since January 1, 2017, has been . . . ordered, steered, or permitted by Judge Bonin to contract for or otherwise receive or pay for ankle monitoring services by ETOH." FAC ¶ 107. Plaintiffs sought class-wide relief against ETOH in the form of: (1) "an order enjoining ETOH from collecting pending or outstanding fees incurred by the class pursuant to [Judge Bonin's and ETOH's unconstitutional ankle monitoring system], and from assessing future fees against the class"; and (2) "a mandatory injunction requiring ETOH to return to the class the fees it has collected from class members since January 1, 2017, with interest, and to cancel any pending or outstanding fees owed by the class." FAC ¶¶ 141–142.[3]

[3] Because Judge Bonin is no longer on the court and no longer a party to this case, Plaintiffs' other requests for relief against ETOH (enjoining the company from sending Judge Bonin defendants' payment statuses or invoking his judicial authority to aid in ETOH's collection of fees, FAC ¶¶ 139–140) are no longer live. The equitable relief of disgorging and canceling the class's fees is the only way to remedy the due process violations committed by ETOH in conjunction with Judge Bonin.

A. Judge Bonin and ETOH had long-standing, significant, and undisclosed personal, financial, professional, and political ties.

From January 2017 until he stepped down in December 2020, Judge Bonin was a Louisiana state court judge on the Orleans Parish Criminal District Court. ETOH Answer ¶ 65.[4] Plaintiffs voluntarily dismissed Judge Bonin as a Defendant in this case in August 2020 when he announced that he would not be seeking reelection. *See* Rec. Doc. 26. ETOH—now the sole Defendant—is a private ankle monitoring company that operated in Judge Bonin's court, performing the state function of exercising custody over criminal defendants. ETOH Answer ¶ 9; Order & Reasons (Rec. Doc. 39) at 9 (holding that "ETOH is a state actor when it provides ankle monitoring services" and denying ETOH's motion to dismiss). When Judge Bonin delegated this state function to ETOH, the for-profit company charged defendants (or their loved ones) daily fees for their own court-imposed custody and surveillance, up to $300 a month. Maurer Decl., Ex. 1 (compilation of class members' "ETOH Monitoring Agreement[s]," "GPS Program Participant Agreement[s]," and "Payment Agreement[s] With ETOH Monitoring, LLC").

ETOH was founded in 2006 by Louisiana-licensed attorneys Leonard L. Levenson and Christian Helmke, who remain the LLC's managers. ETOH Answer ¶¶ 68–69. Levenson was also Judge Bonin's law partner from "approximately 1977 to 1991." ETOH Answer ¶ 67. Through their eponymous law offices, Levenson and Helmke were regular contributors to at least three of Judge Bonin's judicial election campaigns. Together, Levenson and Helmke donated and loaned Judge Bonin's campaigns $9,650. Maurer Decl., Ex. 2 (publicly filed state disclosures by Bonin's

[4] From 2008 to 2016—when he was elected to a seat on the Criminal District Court—Judge Bonin was an elected state appellate court judge on the Louisiana Fourth Circuit Court of Appeal. ETOH Answer ¶ 64.

election campaigns). And Judge Bonin's election campaign owed an unpaid debt of $1,000 to Levenson's office. Maurer Decl., Ex. 2 at Plaintiffs'000083.

Before his terms on the Criminal District Court and the Court of Appeal, Judge Bonin was an elected New Orleans Traffic Court judge. In that capacity, in 2007 (one year after Levenson and Helmke founded ETOH), Judge Bonin was the first judge on the Traffic Court who "agreed to introduce . . . a pilot [ankle monitoring] program along with ETOH Monitoring, in conjunction with Alcohol Monitoring Systems." Maurer Decl., Ex. 3 at PAB004690 ("TrafficWise," official publication of the New Orleans Traffic Court). Judge Bonin was involved in the drafting of a "media advisory" regarding an event announcing his and ETOH's launch of the trial program, at which Judge Bonin and Levenson delivered remarks together. Maurer Decl., Ex. 4.

In 2012, Judge Bonin advised Levenson and Helmke on their presentation at an ankle monitoring conference; Helmke arranged transportation for Judge Bonin to the conference; and Judge Bonin and Helmke discussed conference expenses. Maurer Decl., Ex. 5.

B. Judge Bonin's election benefitted ETOH's for-profit, fee-funded ankle monitoring system.

When Judge Bonin took his seat on the Criminal District Court, he began regularly ordering, steering, and permitting criminal defendants appearing before him and their loved ones to contract with ETOH and pay daily monitoring fees to the company, upon threat of defendants' jailing for inability to pay. ETOH, as an arm of Judge Bonin's court, was an active and critical participant in the court's ankle monitoring system.

During his judicial term, Judge Bonin ordered, steered, or permitted at least 48 defendants or their loved ones, including Named Plaintiffs Meade and Sookram, to contract with ETOH or be contacted by ETOH for ankle monitoring fees. Maurer Decl., Ex. 1 (compilation of 45 defendants' "ETOH Monitoring Agreement[s]," "GPS Program Participant Agreement[s]," and "Payment

Agreement[s] With ETOH Monitoring, LLC"); Maurer Decl., Ex. 12 (compilation of 48 class members' ETOH invoices).[5] Judge Bonin required defendants (almost all of whom were pretrial) to submit to ETOH's custody and surveillance and to pay ETOH's expensive daily fees (up to $10 a day or $300 a month) as a condition of their liberty. Maurer Decl., Ex. 6 (compilation of court transcripts, emails from Judge Bonin and ETOH to defendants and their counsel, and Judge Bonin's custody orders); Maurer Decl., Ex. 1 (compilation of class members' ETOH contracts).

It is important to note that the contracts between ETOH and criminal defendants from Judge Bonin's court were, and are, private contracts between the company and the individual. *See* Maurer Decl., Ex. 1 (compilation of class members' ETOH contracts). While they are the result of a judicial order, the contracts entered into by defendants and ETOH were like any other between a company and an individual. Thus, the remedies for a party's failure to comply with the terms of that contract are those available to all private parties to a contract—negotiation, a private lawsuit, damages, garnishment, etc.

Nonetheless, Judge Bonin inserted himself into both the establishment and enforcement of ETOH's ankle monitoring contracts. As he explained to one defendant in August 2018, Judge Bonin "use[d] a special [ankle monitoring] service." Maurer Decl., Ex. 6 at Plaintiffs'000479. That

[5] Plaintiffs' current estimate that the class consists of at least 48 people is conservative. Plaintiffs' estimate does not include defendants' loved ones, who in several instances paid defendants' ETOH fees, and are therefore themselves also members of the class (because they were ordered, steered, or permitted by Judge Bonin to contract for or otherwise receive or pay for ankle monitoring services from ETOH), but may not appear separately in the contracts and invoices produced by ETOH. Plaintiffs' estimate also does not include defendants who Judge Bonin ordered or steered to ETOH but for whom ETOH has not produced contracts or invoices. Those defendants are members of the class, but if discovery ultimately shows that they did not contract with or pay ETOH, there would be no fees to cancel or disgorge for those individuals. For example, Exhibit 1 of the Maurer Declaration shows at least five additional potential class members for whom ETOH has not produced monitoring agreements or invoices. *See* PAB000529–000530, 000939–000940, 004314–004316, 004482–004483, 004664–004665.

service was ETOH, which Judge Bonin listed by name as the ankle monitoring provider in his custody determination orders. Maurer Decl., Ex. 6 at PAB000515–000516, 004604.

When placing defendants on ankle monitoring, Judge Bonin or his staff provided ETOH's contact information to defendants, their loved ones, and their counsel. That is what Judge Bonin did in the cases of Named Plaintiffs and at least eight other defendants. *E.g.*, Maurer Decl., Ex. 6 at PAB002673. Similarly, in May 2018, Judge Bonin told a juvenile defendant and his mother, "I'm going to send [your attorney] the information [regarding the GPS company] . . . . And once I've confirmed that you have made the financial arrangements with the GPS company, I'll order the release of the bail. Until that time I'm going to hold him until all of those arrangements have been finalized." Maurer Decl., Ex. 6 at Plaintiffs'000466. This was Judge Bonin's standard practice; he regularly made similar statements in court or by email. Maurer Decl., Ex. 6.[6] And when Judge Bonin or his staff emailed defendants or their counsel ETOH's contact information, it was also the chambers' standard practice to "cc" Levenson, Helmke, or other ETOH staff, which they did in almost a dozen cases, including Named Plaintiff Sookram's. Maurer Decl., Ex. 6.[7]

Defendants or their loved ones were then required to enter into standardized "ETOH Monitoring Agreements," "GPS Program Participant Agreements," and "Payment Agreements

[6] Plaintiffs' examples of Judge Bonin's courtroom statements in Exhibit 6 of the Maurer Declaration may very well be underinclusive. Since February 2021, Plaintiffs have been awaiting the Criminal District Court Clerk's responses and productions to a subpoena for documents, including transcripts of Judge Bonin's ankle monitoring orders. Plaintiffs have yet to receive those documents. Plaintiffs are actively pursuing those documents and are in ongoing communication with the Clerk's office. If Plaintiffs receive the documents before this Court decides this motion, Plaintiffs will seek to supplement their evidentiary support with any relevant documents from the Criminal District Court Clerk. Maurer Decl. ¶ 18.

[7] Indeed, ETOH was so enmeshed in the operation of Judge Bonin's ankle monitoring system that in at least one case, the judge cc'ed ETOH on correspondence with a defendant whom he knew to be using another ankle monitoring provider. Maurer Decl., Ex. 6 at PAB004513.

With ETOH Monitoring, LLC." Maurer Decl., Ex. 1 (compilation of ETOH contracts with Named Plaintiffs Meade and Sookram and 43 other class members). ETOH's standardized agreements explicitly included the payment of the company's monitoring fees as a judicially imposed condition of defendants' liberty:

> I UNDERSTAND AND AGREE THAT I AM REQUIRED, AS PART OF THE COURT ORDERED SCRAMx PROGRAM, TO MAKE FULL AND TIMELY PAYMENTS FOR THE SCRAMx PROGRAM.
>
> **I FURTHER UNDERSTAND THAT SHOULD I FAIL TO TENDER FULL AND TIMELY PAYMENTS FOR THE PROGRAM, I WILL PROMPTLY FACE COURT REVOCATION FROM THE PROGRAM, POSSIBLE JAIL SANCTIONS, CIVIL LIABILITY, AND LATE FEES, OTHER CONSEQUENCES DUE TO MY FAILURE TO TENDER TIMELY AND FULL PAYMENTS AS DISCUSSED BELOW.**

Maurer Decl., Ex. 1 (standard language used in class members' ETOH contracts).

Because Judge Bonin and his staff copied ETOH when emailing defendants the company's contact information, ETOH knew which defendants to expect for their court-ordered contracts with the company. Therefore, when a defendant did not show up in the period mandated by Judge Bonin, ETOH sent the judge a standardized, ex parte "non-appearance letter," pursuant to which the judge threatened arrest (without inquiring whether the defendant had instead chosen to be monitored by another provider). Maurer Decl., Ex. 7 (compilation of ETOH's standardized, ex parte non-appearance letters to Judge Bonin and example of Judge Bonin's responses).

ETOH's non-appearance letters were one of five standardized, ex parte letters the company regularly sent to Judge Bonin regarding each defendant. The other four standardized letters were (1) "install letters" (which informed Judge Bonin that a defendant's ankle monitor had been attached), Maurer Decl., Ex. 8 (compilation of over 40 installation letters from ETOH to Judge Bonin); (2) "GPS letters" (which reported a defendant's curfew and geographical violations to

Judge Bonin), Tsitsuashvili Decl. ¶¶ 5–8 & Ex. 1 (attesting to content of over 150 GPS violation letters and attaching sample letter regarding Named Plaintiff Sookram); (3) "removal letters" (which informed Judge Bonin that a defendant's ankle monitor had been removed pursuant to the judge's order), Maurer Decl., Ex. 9 (compilation of over 30 removal letters from ETOH to Judge Bonin); and (4) "collection letters" and similar emails (which served no purpose except asking Judge Bonin to invoke his judicial authority as the company's debt collector, including months after removal of the monitor, as in the case of Named Plaintiff Meade), Maurer Decl., Ex. 10 (compilation of three collection communications from ETOH to Judge Bonin).

In ETOH's standardized, ex parte letters, the company's practice was to keep the judge apprised of each defendant's payment status and, if not current, ask the judge to "remind" the defendant of their "continuing obligation to make payments to our company." ETOH did this regarding Named Plaintiffs Meade and Sookram, and in at least 30 other letters. Maurer Decl., Exs. 9, 10 (compilations of ETOH's "removal" and "collection" letters to Judge Bonin).

Those letters regarding defendants' payment statuses were not ETOH's only efforts to enlist Judge Bonin as the company's judicial debt collector. ETOH also sent Judge Bonin a monthly "Payment Status Report" that detailed every defendant's payment history and status—including each defendant's latest payment and outstanding fee amounts. Maurer Decl., Ex. 11 (compilation of ETOH's monthly ex parte Payment Status Reports to Judge Bonin). In those monthly ex parte spreadsheets, ETOH highlighted in yellow those defendants who were behind on their payments, and the company noted that those defendants therefore "need[ed] attention" from

Judge Bonin. Named Plaintiff Meade was among the defendants whom ETOH highlighted and annotated in this way. Maurer Decl., Ex. 11 at PAB000915, 000919.[8]

As requested by ETOH, Judge Bonin reminded defendants of their outstanding ETOH fees, conditioned their freedom from incarceration on their ability to pay ETOH, and conditioned the length of their ankle monitoring (and accumulation of fees) on their ability to pay ETOH. For example: In the case of Named Plaintiff Sookram, Judge Bonin's staff informed ETOH that "Mr. Sookram will be able to have the monitor removed once his balance is paid in full." Maurer Decl., Ex. 6 at PAB000941.

In another case in May 2018, Judge Bonin "waive[d] any fines and court costs." Later, upon being reminded that the defendant had been ordered to ankle monitoring, Judge Bonin asked, "what service is he with?" Upon learning that it was ETOH, he asked, "How much money do you owe them right now?" and explained that "when you get financially current then they can release you." Maurer Decl., Ex. 6 at PAB004583–004587. Similarly, in October 2018, Judge Bonin would "consider reducing [a defendant's] bond if necessary to expedite the process of [substance abuse] treatment," but no such consideration was made for the defendant's ETOH fees, for which Judge Bonin instructed the defendant's "family [to] contact the ankle monitoring service [*i.e.*, ETOH] to make arrangements for the prepayment (on a monthly basis)." Maurer Decl., Ex. 6 at PAB004536. And in December 2018, Judge Bonin told a defendant and his counsel, "I'm not going to put that

[8] This systemic, standardized arrangement was unique. Unlike ETOH, A2i and the other for-profit companies providing ankle monitoring in the parish did not include defendants' payment histories or statuses in the companies' communications with or reports to Judge Bonin. Also unlike ETOH, other companies did not ask Judge Bonin to act as the companies' debt collector. Tsitsuashvili Decl. ¶¶ 2–4 (attesting to content of other companies' communications and reports to Judge Bonin).

[bail] order in until I am notified by the monitoring service that his family has paid for the monitoring service." Maurer Decl., Ex. 6 at Plaintiffs'000514.

At no point did either Judge Bonin or ETOH inform the defendants or their families whom Judge Bonin ordered, steered, or permitted to enter into expensive contractual agreements with ETOH that Judge Bonin's campaign owed one of the company's principals money; that both of the company's principals were significant financial contributors to Judge Bonin's political campaigns; that one of the company's principals was Judge Bonin's law partner for fourteen years; or that the year after Levenson and Helmke founded ETOH, Judge Bonin was the first judge to partner with the company and that he pioneered the use of ankle monitoring in the New Orleans courts. ETOH Answer ¶¶ 80, 105 (admitting lack of disclosures).

III. STANDARD OF REVIEW

Rule 23 "states that a class action may be maintained if two conditions are met: The suit must satisfy the criteria set forth in subdivision (a) (*i.e.*, numerosity, commonality, typicality, and adequacy of representation), and it also must fit into one of the three categories described in subdivision (b)," for example, because "the party opposing the class has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole." *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 398 (2010) (cleaned up); Fed. R. Civ. P. 23(a), (b)(2). Plaintiffs must also prove that they have standing and that the class is ascertainable. *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1547 n.6 (2016) (class representative must have standing); *DeBremaecker v. Short*, 433 F.2d 733, 734 (5th Cir. 1970) (class must be adequately defined and clearly ascertainable).

IV. ARGUMENT

Plaintiffs meet the standards for class certification. They satisfy the numerosity requirement because Plaintiffs' proposed class consists of at least 48 people who Judge Bonin ordered, steered, or permitted to contract with, pay, or become debtors to ETOH, making joinder impracticable. They satisfy the commonality requirement because the members of the proposed class all suffered the same injury (violation of their due process rights) caused by ETOH (by providing ankle monitoring services to defendants ordered to ankle monitoring by a judge with whom ETOH and its principals had significant and undisclosed personal, financial, professional, and political ties). Plaintiffs satisfy the typicality standard because Named Plaintiffs Meade and Sookram have the same interests and seek the same remedies as the other class members, *i.e.*, to have this Court declare ETOH's actions unconstitutional, to enjoin ETOH from continuing to collect fees imposed under the unconstitutional system, and to issue a mandatory injunction requiring ETOH to return the funds collected pursuant to the unconstitutional system. Plaintiffs also meet the adequacy requirement because they and their counsel are willing and able to pursue this litigation and their interests are not antagonistic to the others in the proposed class.

Plaintiffs satisfy Rule 23(b)(2) because they represent a cohesive class that seeks primarily injunctive and declaratory relief. Plaintiffs have standing because both of the named plaintiffs were subjected to an unconstitutional process in which ETOH was an active participant and beneficiary. And the proposed class is ascertainable because all members of the class can be identified by objective criteria, namely, that they have been defendants in Judge Bonin's courtroom, that he ordered them to ankle monitoring, that he ordered, steered, or permitted them to enter into ankle monitoring service agreements with ETOH, that neither ETOH nor Judge Bonin disclosed their associations to the defendants, and that the defendants did enter into such agreements with ETOH.

A. Plaintiffs satisfy the requirements of Rule 23(a).

This Court is to conduct a "rigorous analysis" to determine whether Plaintiffs have satisfied Rule 23(a). *Gen. Tel. Co. of the Sw. v. Falcon*, 457 U.S. 147, 161 (1982). In doing so, this Court must consider the factual basis for Plaintiffs' claims by examining the pleadings and the evidentiary record, but it should not decide the case on the merits. *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 178 (1974). The Court's rigorous analysis will, however, entail some overlap with the merits. *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 351 (2011).

1. Plaintiffs' proposed class satisfies Rule 23(a)(1)'s numerosity requirement.

Plaintiffs' proposed class "is so numerous that joinder of all members is impracticable." Fed. R. Civ. P. 23(a)(1). "It need not be impossible to join all class members, only difficult and inconvenient to do so." *Shaw v. Toshiba Am. Info. Sys., Inc.*, 91 F. Supp. 2d 942, 954 (E.D. Tex. 2000). While the number of class members alone is not determinative, a class consisting of more than 40 members "should raise a presumption that joinder is impracticable." *Mullen v. Treasure Chest Casino, LLC*, 186 F.3d 620, 624 (5th Cir. 1999) (quoting 1 Newberg on Class Actions § 3:05, at 3-25 (3d ed. 1992)); *see also Musmeci v. Schwegmann Giant Super Markets*, 2000 WL 1010254, at *2 (E.D. La. July 20, 2000) (Barbier, J.) (same). Other considerations include the nature of the action, the size of each class member's claim, class members' geographical dispersion, and the ease of identifying class members. *Leon v. Diversified Concrete, LLC*, 2016 WL 6247674, at *4 (E.D. La. Oct. 26, 2016) (Barbier, J.) (citing *Mullen*, 186 F.3d at 624–25).

Here, Plaintiffs' proposed class raises the presumption of numerosity because it consists of at least 48 people who Judge Bonin ordered, steered, or permitted to contract with or pay ETOH. Maurer Decl., Exs. 1, 6, 7, 12 (class members' ETOH monitoring agreements; communications by Judge Bonin steering people to ETOH; ETOH's non-appearance letters to Judge Bonin; and class members' ETOH invoices). In other words, more than 40 individuals have paid in full or in part

or have outstanding debts to ETOH arising from Judge Bonin's and ETOH's ankle monitoring system, so joinder is presumptively impracticable.

"Furthermore, the nature and size of plaintiffs' individual claims also make joinder impracticable." *Musmeci*, 2000 WL 1010254, at *2. Plaintiffs seek injunctive relief in the form of disgorgement and cancelation of fees, so every member of the class stands to benefit in the same way. And the amount that each class member stands to have disgorged or canceled—ranging from a few hundred dollars to a high of about $6,400, *see* Maurer Decl., Ex. 12 (compilation of class members' ETOH invoices)—is small relative to the costs of joining or prosecuting a lawsuit. Therefore, "many [if not all] claims are too small for a plaintiff to pursue individually" against ETOH. *Musmeci*, 2000 WL 1010254, at *2 (finding impracticability of joinder when each class member stood to gain over $2,500 annually). These problems are exacerbated by the fact that few, if any, class members aside from the Named Plaintiffs are aware of Judge Bonin's and ETOH's due process violations, given the lack of disclosure of most of the pertinent facts giving rise to those violations—*i.e.*, Judge Bonin's and ETOH's relationships and ETOH's ex parte requests for Judge Bonin to act as the company's debt collector.

Finally, class members' potential geographical dispersion is also likely to make joinder "difficult and inconvenient," *Shaw*, 91 F. Supp. 2d at 954, and the potential ease of identification does not outweigh these considerations or overcome the presumption of numerosity. *See Kreger v. General Steel Corp.*, 2010 WL 2902773, at *8 (E.D. La. July 19, 2010). "Although the class members are identifiable" because they appear in judicial and financial records, they may be "dispersed throughout the country" or the state and difficult to contact, *id.*, given the fact that (1) some of the affected class members' interactions with ETOH and Judge Bonin date back four-and-a-half years ago, and (2) most class members are indigent and likely to have unstable housing or

means of communication. Moreover, they stand to have disgorged or canceled fees "that are small enough that protracted litigation might be unrealistic," so "class certification, rather than joinder, is a more reasonable litigation option." *Id.*, at *8 & n.8.

2. Plaintiffs' proposed class satisfies Rule 23(a)(2)'s commonality requirement.

Rule 23(a)(2) mandates "commonality"—that is, there must be "questions of law or fact common to the class." "Commonality requires the plaintiff to demonstrate that the class members 'have suffered the same injury.'" *Dukes*, 564 U.S. at 349–50 (quoting *Falcon*, 457 U.S. at 157). The members' "claims must depend on a common contention" that is "capable of classwide resolution—which means that determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke." *Id.* at 350. This requirement can be satisfied by a single contention common to the class. *M.D. ex rel. Stukenberg v. Perry*, 675 F.3d 832, 840 (5th Cir. 2012).

Plaintiffs' claims for class-wide declaratory and injunctive relief seek to litigate a legal theory that applies to all members of the class, based on factual contentions that also apply equally to all class members. Common questions of fact include but are not limited to:

- Did ETOH and Judge Bonin have long-standing, significant personal, financial, professional, and political ties to one another?
- Did such ties give rise to an appearance of interested decision-making in the court's ankle monitoring system?
- Did Judge Bonin's actions in helping to collect debt for ETOH reflect an actual bias in ETOH's interests?
- Under the totality of the circumstances, do the facts suggest an incentive, temptation, risk, or appearance of interested decision-making—either in the pecuniary interest of an arm of the court or the nonpecuniary interest of the judge—that might affect the administration of judicial proceedings?
- Did Judge Bonin or ETOH not take any steps to mitigate the appearance or actuality of bias or interested decision-making?

This leads to the sole legal question in the case, which is common to all Plaintiffs:

- If all these contentions are true, did the actions of ETOH deprive Plaintiffs of the process to which they were due?

These questions satisfy Rule 23 because they all stem from the practices and patterns of ETOH in conjunction with Judge Bonin. As such, they represent a common contention capable of class-wide resolution. *See Dukes*, 564 U.S. at 350.

3. The Named Plaintiffs' claims are typical of those in the class.

For similar reasons, Plaintiffs' claims are also typical of the class. *See* Fed. R. Civ. P. 23(a)(3). This requirement is met where the claims of the class and the proposed class representatives arise from the same policy or are based on the same legal theories. *Stirman v. Exxon Corp.*, 280 F.3d 554, 562 (5th Cir. 2002). "The typicality requirement under Rule 23(a)(3) is not demanding; it focuses on the similarity between the named plaintiffs' legal and remedial theories and the theories of those whom they purport to represent. Typicality does not require a complete identity of claims. Rather, the critical inquiry is whether the class representative's claims have the same essential characteristics of those of the putative class. If the claims arise from a similar course of conduct and share the same legal theory, factual differences will not defeat typicality." *In re Oil Spill by Oil Rig Deepwater Horizon*, 910 F. Supp. 2d 891, 911 (E.D. La. 2012) (cleaned up).

Plaintiffs assert that ETOH's policy and practice of signing defendants to ankle monitoring services that came about because of the orders of a judge with which it had extensive personal, financial, professional, and political ties violated the Due Process Clause of the Fourteenth Amendment. *See* FAC ¶¶ 1, 122–142. Plaintiffs are typical of the class because they have suffered the same injury as the class, this injury was the result of ETOH's actions, and they seek the same remedies arising from those actions: a declaration as to the constitutionality of those actions and an injunction requiring ETOH to disgorge amounts collected and cancel any outstanding amounts

due. Any possible factual differences (such as the length of time a defendant spent wearing an ankle monitor, the charges against the defendants, their eventual sentence, etc.) are irrelevant because ETOH subjected the Named Plaintiffs and all proposed class members to the same unconstitutional conduct, resulting in the same injury, and thus presenting the same single question of law.

4. The Named Plaintiffs and their attorneys will adequately protect the interests of the proposed class members.

Finally, certification is appropriate because Named Plaintiffs and their counsel will fairly and adequately represent the interests of the class. *See* Fed. R. Civ. P. 23(a)(4), (g). "The adequacy requirement looks at both the class representatives and their counsel. There is no formula for deciding this issue; the adequacy determination is made based on the circumstances of each individual case." *In re Ford Motor Co. Bronco II Prod. Liab. Litig.*, 177 F.R.D. 360, 367 (E.D. La. 1997) (cleaned up). "A district court should evaluate whether the class representatives have a sufficient stake in the outcome of the litigation, and whether the class representatives have interests antagonistic to the unnamed class members. In addition, the district court should inquire into the zeal and competence of the class representatives' counsel and into the class representatives' willingness to take an active role in the litigation and to protect the interests of absentees." *Turner v. Murphy Oil USA, Inc.*, 234 F.R.D. 597, 605 (E.D. La. 2006) (cleaned up).

a. The Named Plaintiffs will protect the interests of the class members.

The Named Plaintiffs will protect the interests of the class members for four reasons. First, they are both members of the class because they were defendants in Judge Bonin's courtroom and they signed ankle monitoring contracts with ETOH. Maurer Decl., Ex. 1 at Meade-ETOH0001–0003, 0019–0023 (Named Plaintiffs' ETOH contracts, representative of all other class members' ETOH contracts). Second, their interests are perfectly aligned with the other members of the class,

who were likewise defendants in Judge Bonin's courtroom and signed ankle monitoring contracts with ETOH. Maurer Decl., Ex. 1 (other class members' nearly identical ETOH contracts). The Named Plaintiffs and the proposed class have a shared objective in receiving a declaration that ETOH's ankle monitoring system was unconstitutional and the entry of an injunction requiring ETOH to disgorge and to stop collecting any money based on such contracts, arising out of ETOH's unconstitutional ankle monitoring system. Their legal position—that ETOH violated their due process rights—is identical. Third, both Named Plaintiffs are committed to vigorously prosecuting this action, as evidenced by their maintenance of this case for fifteen months, productions of personal documents, and availability for discovery. That is, they have "take[n] an active role in and [are willing and able to] control the litigation and to protect the interests of absentees." *Stirman*, 280 F.3d at 563. Fourth, neither Named Plaintiff faces defenses to their claim that would be any different from any other member of the class.

Finally, this case does not request compensatory damages. It instead seeks injunctive and declaratory relief under Rule 23(b)(2). Such cases rarely result in conflicts because the interests of the named plaintiffs and the other members are usually identical (as they are here). *New Directions Treatment Servs. v. City of Reading*, 490 F.3d 293, 313 (3d Cir. 2007).

b. Counsel for Plaintiffs will protect the interests of the class members.

The adequacy rule also applies to the lawyers seeking to represent the class. *In re Oil Spill*, 910 F. Supp. 2d at 912 ("Rule 23(a)(4)'s adequacy requirement encompasses class representatives, their counsel, and the relationship between the two.") (cleaned up). In addition, Rule 23(g) requires a court to appoint class counsel after considering the following non-exclusive factors:

- The work counsel has done in identifying or investigating potential claims;
- Counsel's experience in handling class actions, other complex litigation, and the types of claims asserted in this action;

- Counsel's knowledge of the applicable law; and
- The resources that counsel will commit to representing the class.

Plaintiffs' counsel—IJ and Most & Associates—satisfy these requirements.

IJ is a nonprofit, public interest law firm founded in 1991 that litigates constitutional issues nationwide. IJ has over 45 attorneys in six offices across the United States. IJ has particular expertise litigating to protect property rights and due process claims, including challenging court procedures on constitutional grounds. Maurer Decl. ¶ 3.

Plaintiffs' lead counsel, IJ Senior Attorney William Maurer, is an experienced attorney in high-profile, complex litigation, including class action litigation regarding fines and fees regimes and judicial conflicts of interest. A full description of his experience is contained in his Declaration at ¶¶ 6–13.[9]

IJ is currently representing plaintiffs (including named class action plaintiffs) challenging the administration of judicial and law enforcement systems on due process, financial incentive, and other grounds in New York City (*Corsini v. City of New York*, E.D.N.Y., 1:20-cv-5459) (with Maurer as counsel); South Carolina (*Richardson v. $20,771.00*, S.C., 2017-CP-26-07411); Indiana (*Indiana v. Timbs*, Ind., 20S-MI-289); Chicago, IL (*Davis v. City of Chicago*, N.D. Ill., 1:19-cv-3691); Memphis, TN (*Hohenberg v. Shelby County*, W.D. Tenn., 2:20-cv-2432) (with Maurer as counsel); Detroit, MI (*Ingram v. County of Wayne*, E.D. Mich., 2:20-cv-10288); Pasco, FL (*Taylor v. Nocco*, M.D. Fla., 8:21-cv-555); Lantana, FL (*Martinez v. City of Lantana*, Fla. 15th Judicial Circuit, 50-2021-CA-002564); Dunedin, FL (*Ficken v. City of Dunedin*, M.D. Fla., 8:19-cv-1210); Eagle, WI (*Brewer v. Town of Eagle*, E.D. Wisc., 2:20-cv-1820); Granite City, IL (*Brumit v.*

[9] The descriptions of IJ and Most & Associates, as well as the bios of the individual attorneys from each firm, are attached as Exhibit 13 to the Maurer Declaration.

Granite City, S.D. Ill., 3:19-cv-1090); and Doraville, GA (*Brucker v. City of Doraville*, N.D. Ga., 1:18-cv-2375). Maurer Decl. ¶¶ 4, 6.

IJ has also completed class action litigation in other cases challenging court procedures, including in Philadelphia, PA (*Sourovelis v. City of Philadelphia*, E.D. Pa., 2:14-cv-4687) and—with Maurer as lead counsel—Pagedale, MO (*Whitner v. City of Pagedale*, E.D. Mo., 4:15-cv-1655). Maurer Decl. ¶¶ 5–7.

IJ performed extensive pre-filing work to identify and investigate potential cases, including traveling to Louisiana to meet with and interview potential members of the class, hiring a private investigator to identify potential named plaintiffs and members of the class, and interviewing witnesses familiar with the operation of Judge Bonin's courtroom. Maurer Decl. ¶ 15. Since filing this lawsuit, IJ has litigated ETOH's motions to dismiss and for judgment on the pleadings, brought a motion to compel, conducted extensive party and third-party discovery, and negotiated a protective order with opposing counsel. This case is a major project to which IJ is devoting significant litigation, outreach, and research resources. IJ will ensure staffing throughout this litigation. Maurer Decl. ¶ 16.

Most & Associates and the firm's lead attorney and owner William Most have been class counsel on several certified or putative class action lawsuits raising federal due process and other claims, including: *Giroir v. LeBlanc* (M.D. La., 3:21-cv-108); *Humphrey v. LeBlanc* (M.D. La., 3:20-cv-233); *Opiotennione v. Facebook, Inc.* (N.D. Cal., 3:19-cv-7185); *Mobley v. Facebook, Inc.* (N.D. Cal., 5:16-cv-6440); and *Scola v. Facebook, Inc.* (Cal. Super. Ct., 18-civ-5135) (which resulted in a significant class monetary settlement and substantial non-monetary relief in the form of changes to corporate policies and practices). Most Decl. ¶¶ 8–10; *see also* Most Decl. ¶¶ 2–7 (description of Most's education and litigation experience).

Plaintiffs' counsel have no known conflicts of interest that would prevent them from providing zealous representation to the class. Maurer Decl. ¶ 17; Most Decl. ¶ 11.

B. Plaintiffs satisfy the requirements of Rule 23(b)(2).

This case satisfies Rule 23(b)(2) because ETOH "has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole." The Named Plaintiffs here have suffered the same injury as the other members of the class, so the relief sought would satisfy all claims. The class members' common injury was the direct result of ETOH's actions and failures to act—the company fully participated in Judge Bonin's unconstitutional proceedings and ankle monitoring system, and it took no steps whatsoever to stop or mitigate the harm to the Named Plaintiffs or other class members. It was either constitutional for ETOH to enter into ankle monitoring agreements with defendants ordered to contract for such services by a judge with whom ETOH's principals had long-standing undisclosed personal, financial, professional, and political ties, or it was not. A single order from this Court will answer that question for all class members.

The fact that Plaintiffs seek disgorgement of fees collected by ETOH does not undercut certification of the class under Rule 23(b)(2). The Fifth Circuit has held that disgorgement or other forms of "monetary relief may be obtained in a (b)(2) class action so long as the predominant relief sought is injunctive or declaratory." *Allison v. Citgo Petrol. Corp.*, 151 F.3d 402, 411 (5th Cir. 1998). "By incidental, we mean damages that flow directly from liability to the class *as a whole* on the claims forming the basis of the injunctive or declaratory relief." *Id.* at 415 (emphasis in original). "Monetary relief must be incidental, meaning that it is capable of computation by means of objective standards and not dependent in any significant way on the intangible, subjective differences of each class member's circumstances. Additional hearings to resolve the disparate

merits of each individual's case should be unnecessary." *Bratcher v. Nat'l Standard Life Ins. Co. (In re Monumental Life Ins. Co.)*, 365 F.3d 408, 416 (5th Cir. 2004) (cleaned up).

Of their extant requests for relief, Plaintiffs seek the following: (1) a declaratory order that ETOH violated the due process rights of the members of the class, (2) an injunction seeking to prevent ETOH from providing ankle monitoring services to defendants who appeared in Judge Bonin's court (to the extent that ETOH continues to provide such services after Judge Bonin's retirement), (3) an injunction preventing ETOH from invoking Judge Bonin's judicial authority and power to remind defendants to pay their fees to ETOH (to the extent ETOH continues to do so after Judge Bonin's retirement), (4) an injunction preventing ETOH from continuing to collect fees from the class, and (5) an injunction requiring ETOH to disgorge and return to the class the fees it has collected from class members since January 1, 2017, with interest, and to cancel any pending or outstanding fees owed by the class. FAC, Request for Relief. That is, of the extant relief sought by Plaintiffs, four of the five claims are for nonmonetary declaratory and injunctive relief; therefore, those claims predominate.

Moreover, the amounts of disgorgement are easily discernable using objective standards and are not dependent on intangible or subjective differences in each class member's circumstances. The company's own records establish how much each defendant or their loved ones have paid to ETOH. That is the amount that ETOH will disgorge to that class member. There will be no need for individualized hearings or other considerations of the circumstances of each class member.

C. The Named Plaintiffs have standing.

A class representative must have standing to pursue a class action suit. *Spokeo*, 136 S. Ct. at 1547 n.6. In order to have standing in federal court, a "plaintiff must have (1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to

be redressed by a favorable judicial decision." *Id.* at 1547. Here, Named Plaintiffs have suffered an injury in fact: they paid ETOH for ankle monitoring services based on judicial proceedings that fairly bristled with conflicts of interest and the appearance, and actuality, of bias or interested decision-making. This injury is directly traceable to ETOH: it entered into contracts and collected money from defendants pursuant to these proceedings and took no steps to mitigate or cure this constitutional violation. This Court can redress the wrong done to the Named Plaintiffs as a result of this system by declaring ETOH's policies and practices unconstitutional, enjoining ETOH from continuing to collect fees, and disgorging fees that ETOH has already collected.

D. The proposed class is ascertainable.

The Fifth Circuit has held that, in order to maintain a class action, the class sought to be represented must be adequately defined and clearly ascertainable. *DeBremaecker*, 433 F.2d at 734. "An identifiable class exists if its members can be ascertained by reference to objective criteria." *In re Vioxx Prods. Liab. Litig.*, 2008 WL 4681368, at *9 (E.D. La. Oct. 21, 2008) (cleaned up).

Here, there are objective questions that can identify class members: Were they defendants in Judge Bonin's courtroom after January 1, 2017? Did he order them to ankle monitoring? Did he require, steer, or permit them or their loved ones to sign a contract with or otherwise pay ETOH? Did they contract for or otherwise receive or pay for ankle monitoring services from ETOH? These criteria do not require this Court "to conduct mini-hearings on the merits of each case in order to identify class members." *St. Louis Heart Ctr., Inc. v. Vein Ctrs. for Excellence, Inc.*, 2017 WL 2861878, at *4 (E.D. Mo. July 5, 2017) (cleaned up). The class members (and their ETOH fees) are readily apparent in records already produced by ETOH and Judge Bonin. *See* Maurer Decl., Exs. 1, 6–12. The proposed class is therefore ascertainable and readily identifiable by reference to objective criteria and readily available documents.

V. CONCLUSION

"[Rule 23] creates a categorical rule entitling a plaintiff whose suit meets the specified criteria to pursue his claim as a class action." *Shady Grove*, 559 U.S. at 398. As discussed above, Plaintiffs' suit satisfies Rule 23. Plaintiffs therefore respectfully request that this Court grant their motion and certify the following class pursuant to Rule 23(b)(2): "Every individual who, since January 1, 2017, has been ordered, steered, or permitted by Judge Paul A. Bonin to contract for or otherwise receive or pay for ankle monitoring services from ETOH Monitoring, LLC." In addition, Plaintiffs respectfully request that this Court appoint Hakeem Meade and Marshall Sookram as class representatives. Finally, Plaintiffs respectfully request that this Court appoint the Institute for Justice and Most & Associates as class counsel.

Dated: August 20, 2021

Respectfully Submitted,

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA

HAKEEM MEADE and MARSHALL SOOKRAM, on behalf of themselves and all others similarly situated, Plaintiffs, v. ETOH MONITORING, LLC, a Louisiana Limited Liability Company, Defendant.	No. 2:20-cv-1455 Section J Division 3 District Judge Carl J. Barbier Magistrate Judge Dana M. Douglas

PLAINTIFFS' NOTICE OF SUBMISSION

Please take notice that Plaintiffs' Motion for Class Certification shall be submitted to The Honorable Carl J. Barbier, United States District Judge, on September 22, 2021.

Dated: August 20, 2021

Respectfully Submitted,

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IN THE UNITED STATES DISTRICT COURT
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HAKEEM MEADE and MARSHALL SOOKRAM, on behalf of themselves and all others similarly situated, Plaintiffs, v. ETOH MONITORING, LLC, a Louisiana Limited Liability Company, Defendant.	No. 2:20-cv-1455 Section J Division 3 District Judge Carl J. Barbier Magistrate Judge Dana M. Douglas

[PROPOSED] ORDER

Before the Court is Plaintiffs' motion for class certification and appointment of class representatives and class counsel. Plaintiffs' motion **IS HEREBY GRANTED**.

IT IS HEREBY ORDERED that the following class is certified pursuant to Federal Rule of Civil Procedure 23(b)(2):

> Every individual who, since January 1, 2017, has been ordered, steered, or permitted by Judge Paul A. Bonin to contract for or otherwise receive or pay for ankle monitoring services from ETOH Monitoring, LLC.

IT IS HEREBY FURTHER ORDERED that Named Plaintiffs Hakeem Meade and Marshall Sookram are appointed class representatives, and the Institute for Justice and Most & Associates are appointed class counsel.

New Orleans, Louisiana, this ____ day of _____, 2021.

_____
CARL J. BARBIER
UNITED STATES DISTRICT JUDGE