Nos. 09-978 & 09-994

IN THE

Supreme Court of the United States

UNITED STATES OF AMERICA,

Petitioner,

v.

PHILIP MORRIS USA INC., ET AL.,

Respondents.

TOBACCO-FREE KIDS ACTION FUND, ET AL.,

Petitioners,

v.

PHILIP MORRIS USA INC., ET AL.,

Respondents.

On Petitions for Writs of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

BRIEF IN OPPOSITION FOR BRITISH AMERICAN TOBACCO (INVESTMENTS) LIMITED

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QUESTION PRESENTED

In this action for equitable relief under 18 U.S.C. § 1964(a), the government sought "disgorgement" of $280 billion, purportedly representing the proceeds of the sale of cigarettes over three decades to "youth-addicted" smokers in the United States (and the imputed profits or "additional gains" earned on those sales proceeds). The government sought that *entire amount* from each of the tobacco industry defendants, including respondent British American Tobacco (Investments) Limited ("BATCo"), even though the government's own disgorgement model acknowledged that BATCo never earned a penny in proceeds from the sale of cigarettes to "youth-addicted" smokers.

The question presented in this case is:

Whether the court of appeals correctly held that disgorgement and other backward-looking remedies were unavailable against respondent BATCo, because (1) Section 1964(a) authorizes district courts to issue only "appropriate orders" that "prevent and restrain" *future* violations of the Racketeer Influenced and Corrupt Organizations Act; (2) under the government's own disgorgement model, BATCo had received no sales proceeds (or "additional gains") that could be the subject of disgorgement; and (3) several other features of the government's disgorgement claim showed that it was a claim for *legal* rather than *equitable* restitution, and thus was outside the scope of Section 1964(a).

RULE 29.6 STATEMENT

British American Tobacco (Investments) Limited states that the following publicly held parent companies have a ten percent or greater ownership interest in it: British American Tobacco p.l.c.; British American Tobacco (1998) Limited; B.A.T Industries p.l.c.; and British-American Tobacco (Holdings) Limited.

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BRIEF IN OPPOSITION FOR BRITISH AMERICAN TOBACCO (INVESTMENTS) LIMITED

Respondent British American Tobacco (Investments) Limited ("BATCo") respectfully submits this brief opposing the certiorari petitions filed by the United States and by the Tobacco-Free Kids Action Fund et al. ("intervenors").

STATEMENT

BATCo fully endorses and adopts, but will not repeat here, the arguments made by respondents (and co-defendants) Philip Morris U.S.A. Inc. ("PM"), Lorillard Tobacco Co. ("Lorillard"), R.J. Reynolds Tobacco Co. ("RJR"), Brown & Williamson Holdings, Inc., and Altria Group, Inc. ("Altria") in their joint brief in opposition ("PM Opp."). In submitting this brief, BATCo wishes to highlight several features of the government's claim for disgorgement as specifically applied to BATCo that not only confirm the wisdom of Congress's decision to withhold this draconian sanction in actions brought under the Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. § 1964(a), but also make this case a poor vehicle for deciding "[w]hether 18 U.S.C. 1964(a) *categorically* bars" the remedy of "disgorgement." 09-978 Pet. i (emphasis added). Even if the government were correct that Section 1964(a) authorizes disgorgement in some circumstances, the government's claim against BATCo would be barred – and the D.C. Circuit's dismissal of that disgorgement claim would be correct – for several independent reasons.

A. The Government's Disgorgement Claim

The government originally sought to disgorge from the defendants a "range of potential proceeds" from $108 billion to $742 billion. 04-5252 C.A. App. 858.[1] It later sought to disgorge "only" what it called a "lesser amount" of $280 billion; if ordered, that would have been the largest sum ever awarded to any litigant. *Id.* at 857-58. To arrive at that gargantuan figure, the government first attempted to calculate defendants' proceeds from all cigarette sales beginning in 1971 (RICO's effective date) until 2001, made to a so-called "youth-addicted population" in the United States. *Id.* at 390, 407, 600, 858. That hypothetical population, as defined by the government, included every person who was smoking five or more cigarettes a day at the time he or she turned 21, even though in the vast majority of States it is lawful to sell cigarettes to a person who is 18 or older. *Ibid.*; see also *id.* at 587-91. The government requested disgorgement of *all* the proceeds from *every* cigarette ever sold to such a person during his or her *entire life*. *Id.* at 490-91.

But the government did not stop there. In addition to requesting disgorgement of these historical sales proceeds, it *also* sought disgorgement of "additional gains due to the use" of these sale proceeds "over time" (in effect, imputed earnings or profits on the proceeds). 04-5252 C.A. App. 392; see also *id.* at 396-99, 458-59. To calculate these "additional gains," the government used an average annual rate of re-

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[1] All citations herein to the Appendix in the Court of Appeals are to the Appellants' Appendix filed in the interlocutory appeal (D.C. Cir. No. 04-5252).

turn of 12.1%. *Id.* at 399. As a result, fully 73% of the $280 billion sought by the government consisted of "additional gains." See United States Opposition to Defendants' Motion for Partial Summary Judgment Dismissing the Government's Disgorgement Claim, at 14 (D.D.C. Oct. 7, 2003) (calculating that "$75.49 billion represent[ed] the contemporaneous value of the proceeds and $204.39 billion [was] the adjustment that account[ed] for the time value of money, or Defendants' additional gains").

The government designated two expert witnesses, Dr. Franklin Fisher and Dr. Jonathan Gruber, in support of its disgorgement demand. Both Dr. Fisher and Dr. Gruber testified that the government's estimate of sales proceeds was not limited to *illegally* obtained gains. Dr. Fisher explained: "My part . . . was to estimate the proceeds on sales to the [youth-addicted population] . . . without regard for the question of whether they were earned illegally." 04-5252 C.A. App. 714. Similarly, Dr. Gruber testified that his disgorgement analysis was not limited to the scope of the alleged legal violation: "[T]he effect of the RICO violation was outside what I was asked to do." *Id.* at 727.

The government contended that each of the defendants was jointly and severally liable for the entire $280 billion. At the same time, Dr. Fisher's calculations and model were based on the proceeds of sales solely by the six defendants that manufactured cigarettes for the U.S. market during the relevant time period, namely PM (to which Fisher attributed $159 billion in sales proceeds and "additional gains"), Lorillard ($23 billion), RJR ($64 billion), Liggett ($2 billion), Brown & Williamson Tobacco Company ($30

billion), and American Tobacco Co. ($10 billion). 04-5252 C.A. App. 470. Significantly, the government's disgorgement model attributed *no* sales proceeds to respondent BATCo (or to Altria, a holding company). Nevertheless, as noted above, the government took the position that it was entitled to obtain the entire $280 billion in disgorgement from BATCo.

B. BATCo's Objections To The Government's Disgorgement Claim In The Lower Courts

1. BATCo and its co-defendants moved for summary judgment on the government's disgorgement claim. In addition to contending that disgorgement is *never* an available remedy under Section 1964(a), BATCo argued that the government's claim against BATCo was legally defective because it failed in several important respects to conform to the traditional limits on the equitable remedy of disgorgement. For example, the government had offered no proof as to "what portions of Defendants' gains [were] ill-gotten," and, accordingly, had "fail[ed] to satisfy the most basic criterion of a traditional measure of disgorgement: money acquired from unlawful conduct." Defendants' Brief in Support of Their Motion for Partial Summary Judgment Dismissing the Government's Disgorgement Claim, at 8, 12 (D.D.C. Aug. 1, 2003). Defendants further contended that the government's disgorgement claim failed under *United States* v. *Carson*, 52 F.3d 1173 (2d Cir. 1995), cert. denied, 516 U.S. 1122 (1996), which reversed a disgorgement award under Section 1964(a) on the ground that any disgorgement remedy authorized by that provision would have to be limited to gains that were "being used to fund or promote the illegal conduct, or constitute capital available for that purpose." 52 F.3d at

1182. (That standard could never be satisfied with respect to a RICO defendant, such as BATCo, that never derived any proceeds in the first place.) The district court rejected the argument that disgorgement is not an available remedy under Section 1964(a) and deferred until trial the questions raised about the legal adequacy of the government's disgorgement model. 09-978 Pet. App. 177a-195a.

The government also filed a motion for partial summary judgment on whether the defendants were jointly and severally liable for the requested $280 billion in disgorgement of sales proceeds (and "additional gains"). In an opposition to that motion jointly filed by the defendants, as well as in BATCo's separate motion for summary judgment, BATCo argued that joint and several liability was wholly inappropriate because the government's own experts had already apportioned the alleged liability among the co-defendants – and, significantly, had attributed *none* of the proceeds of U.S. sales to youth-addicted smokers to BATCo. See, *e.g.*, Memorandum of Law in Support of BATCo's Motion for Summary Judgment, at 6 (D.D.C. Oct. 8, 2003). Under these circumstances, BATCo maintained, the application of joint and several liability to BATCo marked a further departure from the traditional limits on disgorgement and would result in the imposition of "an 'additional penalty' of up to [a $280] billion judgment." *Id.* at 28. That result was fundamentally inconsistent with the equitable remedy of disgorgement, BATCo explained, because it would be "clearly punitive" in nature. *Ibid.*[2] In response, the government argued vigorously

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[2] See also Defendants' Memorandum of Points and Authorities in Opposition to the Government's Motion for Partial Summary Judgment, at

for joint and several liability and reiterated its claimed entitlement to seek *the entire $280 billion* from *each* co-defendant, including BATCo. The district court agreed with the government. *United States* v. *Philip Morris USA Inc.*, 316 F. Supp. 2d 19, 26-29 (D.D.C. 2004).

2. On interlocutory appeal under 28 U.S.C. § 1292(b), BATCo and the other defendants argued that disgorgement is legally unavailable under Section 1964(a). See 04-5252 Appellants' Br. 8-11, 13-46. In the alternative, they contended that the government's disgorgement claim failed under *Carson*. *Id.* at 53-55. Finally, they renewed their arguments that, even if Section 1964(a) authorizes disgorgement in some circumstances, it does not authorize the government's claim to joint and several disgorgement of $280 billion in this case, especially against BATCo. 04-5252 Appellants' Br. 46-51, 56-58 & nn.12-16.

Section 1964(a), BATCo and the other defendants explained, is limited to *equitable* remedies, but the government's disgorgement claim was *legal* in nature. In *Great-West Life & Annuity Ins. Co.* v. *Knudson*, 534 U.S. 204 (2002), this Court made clear that claims for the payment of money are rarely equitable claims. "Almost *invariably*," this Court explained, "suits seeking (whether by judgment, injunction, or declaration) to compel the defendant to pay a sum of money . . . are suits for money damages. . . ." *Id.* at 210 (emphasis added) (internal quotation marks and citation omitted). Nor does it mat-

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22 (D.D.C. Sept. 2, 2003) (citing BATCo's example and arguing that "[s]uch a drastic difference between the liability imposed upon each defendant and its alleged ill-gotten gain would render any award not a remedy but a penalty, which is not permitted under civil RICO").

ter, this Court further held, that the monetary remedy is deemed "restitutionary." Restitution is a *legal* remedy where the plaintiff does not seek specific relief – *i.e.*, the return of "*particular* funds or property" – but rather (as here) seeks to impose "a merely personal liability upon the defendant to pay a sum of money." *Id.* at 213, 215 (emphasis added) (quotation marks omitted).[3] Notably, the government in this case does not seek to return to youth-addicted smokers the proceeds of defendants' cigarette sales. Rather, the government seeks simply a lump-sum award for itself.

In addition, BATCo contended, the legal nature of the government's disgorgement claim is confirmed by the government's: pursuit of joint and several liability (a doctrine developed in the law of torts that has no basis in equity); refusal to limit its claim to proceeds that were the result of illegal activity; and attempt to disgorge sales "proceeds" (and imputed "additional gains" thereon) from certain defendants (including BATCo) that under the government's own model indisputably *never received any sales proceeds in the first place* (much less additional gains). Such sweeping relief is manifestly inconsistent with the historic limitations on the disgorgement remedy, as to which the actual receipt of ill-gotten gains by a particular defendant was a prerequisite. Accordingly, BATCo argued, the government's disgorgement claim in this case falls outside of Section 1964(a).

The court of appeals held that disgorgement is not an available remedy under Section 1964(a). The

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[3] See RESTATEMENT OF RESTITUTION § 215, at 866 (1937) (pointing to the "necessity of tracing property" to assert equitable remedies, as opposed to "merely a personal claim").

court did not reach any of BATCo's alternative arguments. See 09-978 Pet. App. 99a-176a.

REASONS FOR DENYING THE PETITIONS

This truly is a case of "déjà vu all over again." More than five years ago, the D.C. Circuit resolved an interlocutory appeal in this case by holding that the government may not pursue disgorgement under 18 U.S.C. § 1964(a). The United States filed a petition for certiorari in which it raised all of the same arguments advanced in its current petition. In October 2005, this Court denied the government's first petition. See 546 U.S. 960. In May 2009, following trial, the D.C. Circuit again rejected the government's appeal (joined now by intervenors) concerning the denial of the disgorgement claim and reaffirmed its prior ruling "as the law of the case." 09-978 Pet. App. 90a. The government did not renew its request for rehearing en banc (which had been denied in 2005).

In the more than five years since the D.C. Circuit issued its disgorgement decision, no other court of appeals has addressed the supposedly "exceptionally important" issues raised by the government's and intervenors' petitions. 09-978 Pet. 14; 09-994 Pet. 20. The purported circuit conflict claimed five years ago by the government – which for reasons explained by BATCo's co-defendants (PM Opp. 8, 23-26) and in the previous brief in opposition (05-92 Opp. 1, 24-26) is at best academic and at worst illusory – has shown no signs of "deepening." The D.C., Second, and Fifth Circuits all agree that disgorgement is unavailable in a case such as this, and no appellate court has ever allowed disgorgement in a civil RICO action.

To say that the issue arises rarely is an understatement. Only the federal government may bring a civil action seeking the remedies authorized by 18 U.S.C. § 1964(a). By the government's own count, it has filed a grand total of approximately 36 such actions in the first 30 years of RICO's existence. See U.S. DEPT. OF JUSTICE, RACKETEER INFLUENCED & CORRUPT ORGANIZATIONS ACT: A MANUAL FOR FEDERAL PROSECUTORS 290-97 (4th ed. 2000). Only a handful of those suits have even sought disgorgement as a remedy. See *id.* at 287-88 & n.12. No wonder that the most the government can claim is that the issues presented by its petition "have exceptional importance *to this case*." 09-978 Pet. 14 (emphasis added); *id.* at 29 ("a question of preeminent importance in the context of this case"). If that is what is meant by S. Ct. Rule 10's reference to "important federal questions," this Court's work would never be done.

Moreover, the government's arguments for this Court's review are even weaker today than they were five years ago. Today, for example, the government can no longer say that "the interlocutory character in this instance heightens, rather than diminishes, the need for this Court's review." 05-92 Pet. Reply Br. 7. And, as BATCo's co-defendants correctly point out (PM Opp. 13, 31), in the intervening years Congress has enacted a statute – the Family Smoking Prevention and Tobacco Control Act, Pub. L. No. 111-31, 123 Stat. 1776 (June 22, 2009) – that confirms the absence of any need for the disgorgement sought by the government in this case. Tellingly, Congress has taken no action to overrule the D.C. Circuit by amending Section 1964(a) to authorize disgorgement. Although the current petitions (unlike the prior gov-

ernment petition) implicate several other backward-looking remedies (relating to smoking cessation and public education), neither the government nor intervenors point to any circuit conflict on those remedies or suggest that those remedies might be authorized by Section 1964(a) even if disgorgement is not. Review should be denied just as it was five years ago.

I. The Government's Attempt To Win A Massive Disgorgement Award Of $280 Billion From A RICO Defendant That Concededly Never Received *Any* Unlawful Proceeds Confirms The Wisdom Of Congress's Decision To Withhold This Remedy

This case starkly illustrates the wisdom of Congress's decision – clearly reflected in the text, structure, and origins of RICO – to withhold from the federal government the remedy of disgorgement under Section 1964(a). Even in this lawsuit seeking to extend RICO liability into novel terrain, the government has at every turn sought to stretch Section 1964(a)'s remedies far beyond their limits. Thus, the government initially suggested it would seek disgorgement of up to $742 billion based on the entire proceeds of sales by the U.S. cigarette industry to "youth addicted" smokers in the United States over a thirty-year period. Later, the government scaled back that breathtaking demand to a merely astonishing $280 billion – an amount that would have been the largest sum ever awarded to any litigant.

The government's disgorgement model, moreover, was hardly a model of restraint. For example, the government sweepingly defined the "youth addicted population" in the United States to include every person who smoked five or more cigarettes a day when

he or she turned 21, even though in most States it is lawful to sell cigarettes to a person who is 18 or older. Nonetheless, the government requested disgorgement of *all* the proceeds from *every* cigarette ever sold to such a person during his or her *entire* lifetime. Nor did the government ask its experts to limit their model to proceeds that had been *illegally* obtained. Instead, the government claimed an entitlement to *all* proceeds from the "youth addicted population," *whether or not* those sales were the result of RICO violations or other unlawful activities.

Nor was the government content merely to demand the entire $75.49 billion in the contemporaneous value of the proceeds under its novel model of disgorgement. Instead, it also sought to recoup phantom "additional gains" – never actually earned by the companies in question – of an additional $204.39 billion. More remarkably still, the government sought those "additional gains" from BATCo, which indisputably had never received any portion of the $75.49 billion in contemporaneous proceeds in the first place.

The government's pursuit of the entire $280 billion against *each and every defendant* – including those, such as BATCo, that according to the government's own model derived *no* proceeds from sales to the "youth addicted" population – revealed the true boundlessness of its zeal to stretch RICO well beyond its breaking point. Even though Section 1964(a) is plainly limited to *equitable* remedies that serve to "prevent and restrain" future violations of RICO, the government has requested a remedy of $280 billion against BATCo alone based on predicate acts of racketeering consisting of eleven unpublished communications made before 1984 – more than 15 years before

this suit was initiated – between BATCo in England and its then-U.S. subsidiary/affiliate Brown & Williamson Tobacco Company, which is now a passive holding company. See 09-980 BATCo Pet. 3-5 & nn.3-4. The government has never articulated how an order requiring disgorgement of *$280 billion* could possibly be needed to "prevent and restrain" BATCo's *future* violations of RICO under these circumstances.

As we explain below, the government's $280 billion disgorgement claim against BATCo represents a radical departure in multiple ways from the traditional limits on the remedy of equitable restitution, including disgorgement. Even apart from those features that take its claim far outside of Section 1964(a), the fact that the government is asking for this relief against BATCo with a straight face merely underscores the wisdom of the D.C. Circuit's ruling on disgorgement and of Congress's apparent desire to let that ruling stand.

II. This Case Is A Poor Vehicle For Addressing Whether Disgorgement Is Categorically Unauthorized By Section 1964(a) Because The Government's Disgorgement Claim Falls Outside Section 1964(a) For Several Independent Reasons

The government asks this Court to grant review to decide "[w]hether 18 U.S.C. 1964(a) *categorically* bars" the remedy of "disgorgement of ill-gotten gains." 09-978 Pet. i (emphasis added). This case, however, is not a good vehicle for answering that question. The reason is straightforward: Even if Section 1964(a) does not categorically preclude the remedy of equitable disgorgement, it does not authorize the highly unusual disgorgement claim advanced by

the government in this case, especially the government's disgorgement claim against BATCo. For that reason, if review is granted the Court is likely to affirm on other grounds without ever reaching the issue presented in the government's petition.

A. It is common ground that Section 1964(a) of RICO is limited to *equitable* remedies. But as this Court held in *Great-West Life & Annuity Ins. Co.* v. *Knudson*, 534 U.S. 204 (2002), claims for the *payment of money* are rarely equitable in nature. "Almost *invariably*," this Court there explained, "suits seeking (whether by judgment, injunction, or declaration) to compel the defendant to pay a sum of money . . . are suits for money damages . . . ." *Id.* at 210 (emphasis added) (internal quotation marks omitted). Money damages are, "'of course, the classic form of *legal* relief.'" *Ibid.* (quoting *Mertens* v. *Hewitt Assocs.*, 508 U.S. 248, 255 (1993)). Under the standard set forth in *Great-West*, restitution is a *legal* remedy where the plaintiff does not seek specific relief – *i.e.*, the return of "particular funds or property" – but rather seeks to impose "a merely personal liability upon the defendant to pay a sum of money." *Id. at* 213, 215 (internal quotation marks omitted).

Great-West also candidly acknowledged that this Court's previous cases had not "drawn [a] fine distinction between restitution at law and restitution in equity" and had too casually characterized restitution in general as "equitable." 534 U.S. at 214-15. Moreover, the equitable species of restitution is subject to certain historical limitations. For example, traditionally it has been available only to restore particular property that has been taken from the plaintiff. See 1 D. DOBBS, LAW OF REMEDIES: DAMAGES –

EQUITY – RESTITUTION § 4.1(1), at 551 (2d ed. 1993) ("Restitution is a *return* or *restoration* of what the *defendant has gained in a transaction.*") (emphasis added); *Great-West*, 534 U.S. at 213 (restitution in equity was limited to situations where "money or property identified as belonging in good conscience to the plaintiff could clearly be *traced* to particular funds or property *in the defendant's possession*") (emphasis added); see also note 3, *supra*. Accordingly, equitable restitution presupposes the actual receipt of ill-gotten gains by a particular defendant.

B. In the wake of *Great-West*, it is clear that the type of restitutionary relief the government seeks in this case is *not* an equitable remedy but rather a legal one. As such, it is unauthorized by Section 1964(a) even if that provision might permit other types of restitutionary remedies in circumstances different from those presented here. Indeed, the government's disgorgement claim against BATCo strayed from the historical limits on equitable restitution in a number of ways. First, it sought a money award from BATCo and the other defendants rather than the return of specific property taken from youth-addicted smokers. Second, it sought to have that money paid to the U.S. government, not returned to the smokers themselves. Third, it sought to obtain the disgorgement of funds that were not limited to the proceeds of *unlawful* activity. Fourth, the government's claim for disgorgement *against BATCo* was also invalid because even the government's own model acknowledged that BATCo received no sales proceeds that could possibly be the subject of disgorgement. Because BATCo received no such proceeds, it also could not possibly have received any "additional gains," imputed or otherwise, on those proceeds. The government's effort to

obtain disgorgement of phantom sales proceeds and phantom "additional gains" on a *joint and several* basis from BATCo is thus manifestly inconsistent with the historic limitations on the disgorgement remedy. 1 DOBBS, *supra*, § 4.1(1), at 551 ("Restitution is a return or restoration of what the *defendant has gained in a transaction.*") (emphasis added).[4]

C. Finally, the government's disgorgement claim against BATCo independently fails under the reasoning set forth in *United States* v. *Carson*, 52 F.3d 1173 (2d Cir. 1995), cert. denied, 516 U.S. 1122 (1996). There, the Second Circuit held that any disgorgement remedy authorized by Section 1964(a) would be limited to gains that were "being used to fund or promote the illegal conduct, or constitute capital available for that purpose." *Id.* at 1182. That standard plainly cannot be satisfied with respect to a RICO defendant, such as BATCo, that has never derived any proceeds to begin with.

For all of these reasons, this case is an exceedingly poor vehicle for attempting to resolve the disgorgement issue presented in the government's peti-

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[4] Joint and several liability developed in tort law, not in equity, and it was aimed at ensuring full compensation to an injured plaintiff. See W. PAGE KEETON, D. DOBBS, R. KEETON & D. OWEN, PROSSER AND KEETON ON THE LAW OF TORTS 346 (5th ed. 1984). Disgorgement, in contrast, is not aimed at compensation. The district court's reliance on treble-damages and forfeiture actions in upholding the government's joint-and-several-liability theory, see *United States* v. *Philip Morris USA Inc.*, 316 F. Supp. 2d 19, 26-29 (D.D.C. 2004), was therefore completely misplaced. Moreover, the government's attempt to impose a $280 billion disgorgement remedy jointly and severally *on each of the defendants* – regardless of whether they received *any* ill-gotten proceeds or "additional gains" – ignores Congress's command that any remedy imposed under Section 1964(a) be specifically calibrated to "prevent and restrain" future RICO violations by each defendant individually.

tion. If the Court nevertheless grants review of the disgorgement question, BATCo will ask the Court to affirm the invalidation of the disgorgement claim against BATCo on multiple alternative grounds. See *Bennett* v. *Spear*, 520 U.S. 154, 166 (1997) ("[a] respondent is entitled . . . to defend the judgment on any ground supported by the record"); E. GRESSMAN, K. GELLER, S. SHAPIRO, T. BISHOP & E. HARTNETT, SUPREME COURT PRACTICE § 6.35, at 489-90 (9th ed. 2007).

CONCLUSION

The petitions for writs of certiorari should be denied.

Respectfully submitted.

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MAY 2010