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**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

SECURITIES AND EXCHANGE  
COMMISSION,

Plaintiff,

v.

EARTHLY MINERAL SOLUTIONS,  
INC., et al.,

Defendants.

2:07-CV-1057 JCM (LRL)

**ORDER**

Presently before the court is the case of *Securities and Exchange Commission v. Earthly Mineral Solutions, Inc. et al* (Case No. 2:07-cv-01057-JCM-LRL).

In the amended complaint (doc. #73), the Securities and Exchange Commission (hereinafter “SEC”) asserts four separate claims for relief against defendants Roy D. Higgs, Frank L. Schwartz, and Rick Lawton (hereinafter collectively “individual defendants”), as officers of Earthly Mineral Solutions Inc. and Natural Minerals Processing Company (hereinafter “corporate defendants”) for: (1) the unregistered offer and sale of securities in violations of sections 5(a) and (c) of the Securities Act of 1933 (“Securities Act”); (2) fraud in the offer or sale of securities in violation of section 17(a) of the Securities Act; (3) fraud in connection with the purchase or sale of securities in violations of section 10(b) of the Securities Exchange Act of 1934 (“Exchange Act”) and rule 10b-5 thereunder; and (4) violations of the broker-dealer registration provisions of section 15(a) of the Exchange Act.

On July 15, 2010, this court entered default against corporate defendants for failure to obtain

1 counsel pursuant to Federal Rules of Civil Procedure 16(f), 37(b)(2)(A), and 55(a). (Doc. #76).  
2 Subsequently, individual defendant Frank L. Schwartz consented (doc. #85) to the entry of judgment  
3 against him, and the court entered judgment accordingly (doc. #91). Upon SEC's motion for  
4 summary judgment against the individual defendants (doc. #78), the court entered summary  
5 judgment on plaintiff's second and third claims against individual defendants. (Doc. #97).

6 On September 24, 2010, the court granted the plaintiff's prayer for a permanent injunction  
7 prohibiting future violations and for disgorgement in the amount of \$20 million, together with  
8 prejudgment interest, against corporate defendants. (Doc. #98). The court denied, without prejudice,  
9 the request for civil penalties, due to the court being provided with only an approximate number of  
10 investors to calculate an award of civil penalties. *Id.* Subsequently, on January 1, 2011, defendant  
11 Rick Lawton consented to entry of judgment (doc. #108), and the court entered judgment (doc. #117)  
12 against him accordingly.

13 After granting plaintiff's motion to extend time to file dispositive motions (doc. #111),  
14 plaintiff filed a motion for summary judgment against the only remaining defendant, Roy D. Higgs  
15 (doc. #112). Prior to the court's decision, it entered an order setting trial for April 11, 2011. (Doc.  
16 #119). Subsequently, the court granted the motion for summary judgment against defendant Higgs  
17 (doc. #120) with regards to the disgorgement and permanent injunction, and denied the motion with  
18 regards to the prayer for civil penalties. The court held that it was unable to determine the civil  
19 penalties at this time due to the fact that the court was only provided with an estimated number of  
20 investors to calculate the award.

21 As there are no pending issues before this court, which is awaiting a proposed judgment with  
22 the exact figures for the civil penalties, a trial is not warranted in this case.

23 Accordingly,

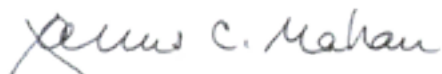
24 IT IS HEREBY ORDERED ADJUDGED AND DECREED that the calendar call set for  
25 April 6, 2011, and the trial set for April 11, 2011, in *Securities and Exchange Commission v. Earthly*  
26 *Mineral Solutions, Inc. et al* (Case No. 2:07-cv-01057-JCM-LRL) (doc. #119) be, and the same  
27 hereby are, VACATED.

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IT IS FURTHER ORDERED that there be a status check hearing in the above captioned case  
on April 28, 2011, at 10:00 a.m.

DATED April 5, 2011.

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UNITED STATES DISTRICT JUDGE