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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

SECURITIES AND EXCHANGE  
COMMISSION,

Plaintiff,

vs.

EMVEST MORTGAGE FUND, LLC,  
EMVEST, INC., and MILON LYLE  
BROCK,

Defendants.

Case No.

**COMPLAINT FOR VIOLATIONS OF THE  
FEDERAL SECURITIES LAWS**

Plaintiff Securities and Exchange Commission (“Commission”) alleges as follows:

**JURISDICTION AND VENUE**

1. This Court has jurisdiction over this action pursuant to Sections 20(b), 20(d)(1), and 22(a) of the Securities Act of 1933 (“Securities Act”), 15 U.S.C. §§ 77t(b), 77t(d)(1), & 77v(a), and Sections 21(d)(1), 21(d)(3)(A), 21(e), and 27 of the Securities Exchange Act of 1934 (“Exchange Act”), 15 U.S.C. §§ 78u(d)(1), 78u(d)(3)(A), 78u(e) & 78aa. Defendants have, directly or indirectly made use of

1 the means or instrumentalities of interstate commerce, of the mails, or of the  
2 facilities of a national securities exchange, in connection with the transactions,  
3 acts, practices and courses of business alleged in this complaint.

4 2. Venue is proper in this district pursuant to Section 22(a) of the  
5 Securities Act, 15 U.S.C. § 77v(a), and Section 27 of the Exchange Act, 15 U.S.C.  
6 § 78aa, because the defendants reside and conduct business in the district and  
7 because certain of the transactions, acts, practices, and courses of conduct  
8 constituting violations of the federal securities laws occurred within this district.

9 **SUMMARY**

10 3. This case involves an ongoing Ponzi scheme concerning the  
11 fraudulent offer and sale of approximately \$18 million of securities in Emvest  
12 Mortgage Fund, LLC (the “Fund”) by the Fund, its manager, Emvest, Inc.  
13 (“Emvest”), and by Emvest’s Chief Executive Officer, Milon Lyle Brock  
14 (“Brock”). In 2003 and 2004, defendants misrepresented and failed to disclose to  
15 potential and existing Fund investors material information regarding a) the use of  
16 investor capital; b) investor returns; and c) the preservation of investor capital.

17 4. The defendants represented that the investors’ capital would be used  
18 to make and purchase loans secured by real property, without disclosing, among  
19 other things, that the defendants used substantial amounts of new investors’ capital  
20 to pay returns to existing investors and to cover the Fund’s operating losses.  
21 Moreover, despite an explicit prohibition in the offering prospectus, the defendants  
22 used investor capital to pay finder’s fees or commissions to a company affiliated  
23 with the Fund.

24 5. The defendants misrepresented investor returns by representing that  
25 the Fund would pay investors a 12% return on their capital, while failing to  
26 disclose that all or a substantial portion of their 12% return was funded with new  
27 investor capital.

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1 approving the Fund's prospectus.

2 14. The Fund solicited investors through cold calls, newspaper and radio ads, newsletters, and the  
3 Emvest website found at "megayield.com." The Fund's newspaper ads emphasized that the Fund would pay 12%.  
4 Some of the Fund's newsletters, which were sent to both existing and potential investors, stated that current  
5 investors were earning 12.5% "with no loss of principal." Brock reviewed the newspaper ads and newsletters before  
6 they were published. Emvest's website touted "a double-digit return" of 12% on the principal investment. The  
7 website also stated that the Fund's objective was to "[p]reserve and return [investor's] capital contributions" and that  
8 the investment was suitable for IRAs and pension plans seeking capital preservation.

9 **B. The Fund's Use of Investor Capital and Operating Results**

10 15. The Fund used investments from new investors to pay returns to  
11 earlier investors during 2003 and 2004.

12 16. In 2003, the Fund used \$323,766 of new investor capital to pay  
13 distributions to other investors. In 2003, the Fund had an operating profit of only  
14 \$584,696, but distributed \$908,462 to existing investors. Thus, the distribution  
15 was paid in part with new investor capital.

16 17. From January through August 2004, the Fund had an operating loss of  
17 about \$112,000. During the same period, the Fund paid investors approximately  
18 \$1.174 million in distributions, using approximately \$1.286 million of new  
19 investor capital to pay the distributions and to cover operating losses.

20 18. The Fund's distributions have reduced the existing investors' capital  
21 accounts, because the Fund has used that capital to pay returns. The defendants  
22 have not properly valued the investors' capital accounts to reflect their reduced  
23 value caused by the use of investor capital to pay returns. The Fund does not have  
24 current financial statements showing the true value of each investor's capital  
25 account. The defendants have not prepared financial statements showing the  
26 current value of each investor's capital account since late 2003. As a result, during  
27 2004, defendants have allowed some investors to make withdrawals that exceed  
28 the actual amount of their remaining capital.

1           **C.     Defendants' Misrepresentations and Omissions**

2           19.    The defendants made false representations regarding their use of  
3 investor capital. The defendants falsely represented that after deducting 4% from  
4 investors' funds for sales commissions, they would use the gross proceeds  
5 principally for funding or acquiring loans. Instead, the defendants used a  
6 substantial amount of new investor capital to pay returns to existing investors in  
7 2003 and 2004, and to cover operating losses in 2004. Indeed, in 2004, the  
8 defendants have used almost 18% of the Fund's new investments to pay  
9 distributions to existing investors and cover the Fund's operating loss.

10          20.    The Fund has also made misrepresentations regarding the use of  
11 investor capital to pay finder's fees or commissions to EB Financial. The Fund  
12 prospectus states that "affiliates of [Emvest], may receive loan origination,  
13 broker's, finder's, and/or other fees from third parties (but not the [Fund]) in  
14 connection with the acquisition and/or disposition of assets comprising the  
15 [Fund's] loan portfolio." Despite this representation, in May and June of 2004, the  
16 Fund paid approximately \$243,719 in finder's fees or commissions to EB  
17 Financial, an affiliate of Emvest.

18          21.    The defendants falsely represented that investors would receive a 12%  
19 return on their capital. These representations were false and misleading in that  
20 they omitted to disclose that all or a substantial portion of the return was funded  
21 with new investor capital. In 2003, approximately 35% of investor returns were  
22 paid with new investor capital and in 2004, all investor returns were paid with new  
23 investor capital.

24          22.    The defendants falsely represented that the Fund's objective was to  
25 preserve capital contributions. At the time such representations were made, the  
26 defendants were reducing the investors' capital accounts by distributing more than  
27 the Fund earned in 2003 and 2004.

28           **D.     Defendants Acted with Scienter**

1           23.     Brock, and through him the Fund and Emvest, have acted with scienter. Brock knew, or was  
2 reckless in not knowing, that the Fund was distributing to investors more than the Fund was actually earning, that  
3 the Fund's distributions to investors included a return of principal, and that the investors' capital accounts were  
4 being depleted by distributions that exceeded earnings. Brock supervised the Fund's monthly operations, signed  
5 most of the Fund's checks, and reviewed the Fund's monthly collections or revenues.

6           24.     In or about August 2003, the Fund's accountants told Brock that the Fund's 12.5% distributions  
7 exceeded the Fund's actual earnings. As a result, investors' capital accounts were being reduced. The accountants  
8 told Brock that withdrawing investors had incorrectly been paid more than the amount of their capital account, and  
9 advised him that investors should only be paid the amount of their capital accounts upon leaving the Fund.

10          25.     In early 2004, seeing that nothing had changed, the accountants again warned Brock that  
11 investors should not be paid more than the amount in their capital accounts upon withdrawal from the Fund.  
12 Ignoring the accountants, Brock continued to pay distributions in excess of earnings, and failed to keep accurate and  
13 current records of investors' capital accounts.

14          26.     In 2004, the accountants resigned. Since then, defendants have been unable or unwilling to find  
15 another accounting firm that would examine the Fund's books and records and prepare the Fund's financial reports.  
16 Because of the failure to have an accounting firm and to maintain accurate financial records, some investors have  
17 been overpaid, to the detriment of other investors, when they withdrew from the Fund in 2004.

18          27.     Brock also knew that the Fund paid prohibited finder's fees or commissions to EB Financial  
19 because he directed the Fund's bookkeeper to write the checks to EB Financial.

20          28.     Despite this knowledge, Brock continued to offer and sell the Fund's securities through  
21 prospectuses, newspaper ads, and newsletters that misrepresented and failed to disclose material information about  
22 the Fund's use of investor capital, the Fund's returns, and the preservation of capital.

23           **E.     ASSET DISSIPATION AND ONGOING FRAUD**

24          29.     There is a reasonable likelihood that the defendants' fraudulent  
25 conduct will continue if not enjoined.

26          30.     If defendants are not immediately stopped, there is a serious risk that  
27 they will continue to dissipate assets in the Fund. Defendants have been using and  
28 probably will continue to use new investors' capital to pay returns. Defendants

1 have misled and probably will continue to mislead investors regarding the source  
2 of their returns. Defendants have been using and will probably continue to use  
3 investor capital to pay operating expenses. Defendants have failed and will  
4 probably continue to fail to keep accurate books and records reflecting the true  
5 state of affairs.

6 **FIRST CLAIM FOR RELIEF**

7 **FRAUD IN THE OFFER OR SALE OF SECURITIES**

8 **Violations of Section 17(a) of the Securities Act**

9 31. The Commission realleges and incorporates by reference paragraphs 1  
10 through 30 above.

11 32. Defendants the Fund, Emvest, and Brock, and each of them, by  
12 engaging in the conduct described above, directly or indirectly, in the offer or sale  
13 of securities by the use or means or instruments of transportation or  
14 communication in interstate commerce or by use of the mails:

- 15 a. with scienter, employed devices, schemes, or artifices to  
16 defraud;
- 17 b. obtained money or property by means of untrue statements of a  
18 material fact or by omitting to state a material fact necessary in  
19 order to make the statements made, in light of the circumstances  
20 under which they were made, not misleading; or
- 21 c. engaged in transactions, practices, or courses of business which  
22 operated or would operate as a fraud or deceit upon the  
23 purchaser.

24 33. By engaging in the conduct described above, each of the defendants  
25 violated, and unless restrained and enjoined will continue to violate, Section 17(a)  
26 of the Securities Act, 15 U.S.C. § 77q(a).

27 **SECOND CLAIM FOR RELIEF**

28 **FRAUD IN CONNECTION WITH THE**



1                                   **PURCHASE OR SALE OF SECURITIES**  
2                                   **Violations of Section 10(b) of the Exchange Act**  
3                                   **and Rule 10b-5 thereunder**

4           34.   The Commission realleges and incorporates by reference paragraphs 1  
5 through 30 above.

6           35.   Defendants the Fund, Emvest, and Brock, and each of them, by  
7 engaging in the conduct described above, directly or indirectly, in connection with  
8 the purchase or sale of a security, by the use of means or instrumentalities of  
9 interstate commerce, of the mails, or of the facilities of a national securities  
10 exchange, with scienter:

- 11           a.   employed devices, schemes, or artifices to defraud;
- 12           b.   made untrue statements of a material fact or omitted to state a  
13               material fact necessary in order to make the statements made, in  
14               the light of the circumstances under which they were made, not  
15               misleading; or
- 16           c.   engaged in acts, practices, or courses of business which operated  
17               or would operate as a fraud or deceit upon other persons.

18           36.   By engaging in the conduct described above, each of the defendants  
19 violated, and unless restrained and enjoined will continue to violate, Section 10(b)  
20 of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5 thereunder, 17 C.F.R. §  
21 240.10b-5.

22                                   **PRAYER FOR RELIEF**

23           WHEREFORE, the Commission requests that the Court:

24                                   **I.**

25           Issue findings of fact and conclusions of law that the defendants committed  
26 the alleged violations.

27                                   **II.**

28           Issue orders, in a form consistent with Rule 65(d) of the Federal Rules of

1 Civil Procedure, temporarily, preliminarily, and permanently enjoining each  
2 defendant and their officers, agents, servants, employees, and attorneys, and those  
3 persons in active concert or participation with any of them, who receive actual  
4 notice of the order by personal service or otherwise, and each of them, from  
5 violating Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act  
6 and Rule 10b-5 thereunder.

7 **III.**

8 Issue in a form consistent with Rule 65 of the Federal Rules of Civil  
9 Procedure, a temporary restraining order and a preliminary injunction freezing the  
10 assets of the Fund and Emvest and prohibiting each of the defendants from  
11 destroying documents; ordering accountings from each of the defendants,  
12 expediting discovery and appointing a receiver over defendants the Fund and  
13 Emvest.

14 **IV.**

15 Order each defendant to disgorge all ill-gotten gains from their illegal  
16 conduct, together with prejudgment interest thereon.

17 **V.**

18 Order Brock and Emvest, Inc. to pay civil penalties under Section 20(d) of  
19 the Securities Act, 15 U.S.C. § 77t(d), and Section 21(d)(3) of the Exchange Act,  
20 15 U.S.C. § 78u(d)(3).

21 **VI.**

22 Retain jurisdiction of this action in accordance with the principles of equity  
23 and the Federal Rules of Civil Procedure in order to implement and carry out the  
24 terms of all orders and decrees that may be entered, or to entertain any suitable  
25 application or motion for additional relief within the jurisdiction of this Court.

26 **VII.**

27 Grant such other and further relief as this Court may determine to be just and  
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DATED: November 15, 2004

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Susan F. Hannan  
Attorney for Plaintiff  
Securities and Exchange Commission