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3:04-CV-02295 SEC V. EMVEST MORTGAGE FUND

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CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

Calumet DEPUTY

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

11 **SECURITIES AND EXCHANGE**
12 **COMMISSION,**

13 Plaintiff,

14 vs.

15 **EMVEST MORTGAGE FUND, LLC,**
EMVEST, INC., and MILON LYLE
16 **BROCK,**

17 Defendants.

Case No. 04 CV 2295 DMS (LSP)

**NOTICE OF ISSUANCE OF ORDER
FOR EARLY NEUTRAL
EVALUATION CONFERENCE**

18 **TO ALL DEFENDANTS AND THEIR COUNSEL OF RECORD:**

19 **PLEASE TAKE NOTICE THAT** the Honorable Leo S. Papas, United
20 States Magistrate Judge for the Southern District of California, has issued an order
21 setting the Early Neutral Evaluation Conference on January 31, 2005, at 2:00 p.m.,
22 a copy of the order is hereto for reference.

23
24 DATED: December 9, 2004

Molly M. White

MOLLY M. WHITE
Attorney for Plaintiff
Securities and Exchange Commission

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04 DEC -8 PM 2:07

CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

DEPUTY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

SECURITIES AND EXCHANGE)	Civil No. 04-2295-DMS (LSP)
COMMISSION,)	
)	NOTICE AND ORDER FOR EARLY
Plaintiff,)	NEUTRAL EVALUATION CONFERENCE
v.)	
)	
EMVEST MORTGAGE FUND, LLC,)	
et al.)	
)	
Defendants.)	

IT IS HEREBY ORDERED that an Early Neutral Evaluation of your case will be held on January 31, 2005, at 2:00 PM before United States Magistrate Judge Leo S. Papas, United States Courthouse, Courtroom G, First Floor, 940 Front Street, San Diego, California.

Pursuant to Rule 16.1(c) of the Local Rules of the United States District Court for the Southern District of California, both counsel and the parties who have full and unlimited authority¹ to

¹ "Full authority to settle" means that the individuals at the settlement conference must be authorized to fully explore settlement options and to agree at that time to any settlement terms acceptable to the parties. Heileman Brewing Co., Inc. v. Joseph Oat Corp., 871 F.2d 648 (7th Cir. 1989). The person needs to have "unfettered discretion and authority" to change the settlement position of a party. Pitman v. Brinker Intl., Inc., 216 F.R.D. 481, 485-486 (D. Ariz. 2003). The purpose of requiring a person with unlimited settlement authority to attend the conference includes that the person's view of the case may be altered during the face

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1 negotiate and enter into a binding settlement shall appear in person
2 at the conference and shall be prepared to discuss the claims,
3 defenses and damages.

4 Unless there are **extraordinary circumstances**, persons
5 required to attend the conference pursuant to this Order shall not
6 be excused from personal attendance. Requests for excuse from
7 attendance for extraordinary circumstances shall be made in writing
8 at least 48 hours prior to the conference. Where the suit involves
9 the United States or one of its agencies, only counsel for the
10 United States with full settlement authority need appear. All
11 conference discussions will be informal, off the record, privileged
12 and confidential.

13 The parties may, but are not required to, submit a short
14 Early Neutral Evaluation Conference Statement about the case on a
15 confidential basis.

16 In the event the case does not settle at the Early Neutral
17 Evaluation Conference, the parties shall also be prepared to discuss
18 the following matters at the conclusion of the conference.

19 1. Any anticipated objections under Federal Rule of Civil
20 Procedure 26(a)(1)(E) to the initial disclosure provisions of
21 Federal Rule of Civil Procedure 26(a)(1)(A-D);

22 2. The scheduling of the Federal Rule of Civil Procedure
23 26(f) conference;

24 3. The date of initial disclosure and the date for lodging
25 the discovery plan following the Rule 26(f) conference; and,

26 4. The scheduling of a Case Management Conference pursuant

27 _____
28 to face conference. Id. at 486. A limited or a sum certain of authority
is not adequate. Nick v. Morgan's Foods, Inc., 270 F.3d 590 (8th Cir.
2001).

1 to Federal Rule of Civil Procedure 16(b).

2 The Court will issue an appropriate order addressing these
3 issues and setting dates as appropriate.

4 Plaintiff's counsel shall notify all Defendants of the date
5 and time of the Early Neutral Evaluation Conference. Questions
6 regarding this case may be directed to the Magistrate Judge's
7 research attorney at (619) 557-6384.

8 DATED: December 8, 2004

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10 
11 _____
12 LEO S. PAPPAS
13 United States Magistrate Judge
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23 cc: The Honorable Dana M. Sabraw
24 All Parties
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PROOF OF SERVICE

I am over the age of 18 years and not a party to this action. My business address is:

U.S. SECURITIES AND EXCHANGE COMMISSION, 5670 Wilshire Boulevard, 11th Floor, Los Angeles, California 90036-3648
Telephone No. (323) 965-3998; Facsimile No. (323) 965-3908.

On December 9, 2004, I served the document entitled **NOTICE OF ISSUANCE OF ORDER FOR EARLY NEUTRAL EVALUATION CONFERENCE** upon the parties to this action addressed as stated on the attached service list:

OFFICE MAIL: By placing in sealed envelope(s), which I placed for collection and mailing today following ordinary business practices. I am readily familiar with this agency's practice for collection and processing of correspondence for mailing; such correspondence would be deposited with the U.S. Postal Service on the same day in the ordinary course of business.

PERSONAL DEPOSIT IN MAIL: By placing in sealed envelope(s), which I personally deposited with the U.S. Postal Service. Each such envelope was deposited with the U.S. Postal Service at Los Angeles, California, with first class postage thereon fully prepaid.

EXPRESS U.S. MAIL: Each such envelope was deposited in a facility regularly maintained at the U.S. Postal Service for receipt of Express Mail at Los Angeles, California, with Express Mail postage paid.

HAND DELIVERY: I caused to be hand delivered each such envelope to the office of the addressee.

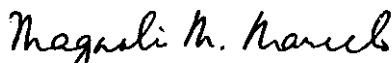
FEDERAL EXPRESS BY AGREEMENT OF ALL PARTIES: By placing in sealed envelope(s) designated by Federal Express with delivery fees paid or provided for, which I deposited in a facility regularly maintained by Federal Express or delivered to a Federal Express courier, at Los Angeles, California.

ELECTRONIC MAIL: By transmitting the document by electronic mail to the electronic mail address as stated on the attached service list.

FAX (BY AGREEMENT ONLY): By transmitting the document by facsimile transmission. The transmission was reported as complete and without error.

(Federal) I declare that I am employed in the office of a member of the bar of this Court, at whose direction the service was made. I declare under penalty of perjury that the foregoing is true and correct.

Date: December 2, 2004



MAGNOLIA M. MARCELO

