

KENT S. ROBINSON, OSB #09625

Acting United States Attorney

District of Oregon

SEAN E. MARTIN, OSB #054338

Assistant United States Attorney

United States Attorney's Office

1000 SW Third Ave., Suite 600

Portland, Oregon 97204-2902

Telephone: (503) 727-1010

Facsimile: (503) 727-1117

sean.martin@usdoj.gov

Attorneys for United States

UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

PORTLAND DIVISION

UNITED STATES OF AMERICA,

Case No. _____

Plaintiff,

v.

COMPLAINT

SMART FOREST VENTURES I, L.P.,

a Delaware limited partnership

Defendant.

COMPLAINT FOR RECEIVERSHIP AND INJUNCTION

COMES NOW Plaintiff, the United States of America, on behalf of its agency, the Small Business Administration, and for its cause of action states as follows:

PARTIES, JURISDICTION, AND VENUE

1. This is a civil action brought by the United States on behalf of its agency, the Small Business Administration (hereinafter, "SBA," "Agency" or "Plaintiff"), whose central office is located at 409 Third Street, S.W., Washington, DC 20416.

2. Jurisdiction is conferred on this Court by virtue of the Small Business Investment Act of 1958, as amended (hereinafter, the "Act"), Sections 308(d), 311, and 316; 15 U.S.C. §§687(d), 687c, 687h; the Small Business Act, 15 U.S.C. §634(b)(1); and 28 U.S.C. §1345.

3. Defendant, Smart Forest Ventures I, L.P. (hereinafter "Smart Forest" or "Licensee"), is a Delaware limited partnership formed on or about June 21, 2000 that maintains its principal place of business at 319 S.W. Washington Street, Suite 720, Portland, Oregon 97204. Venue is therefore proper under 15 U.S.C. §§ 687(d), 687h and 28 U.S.C. §1391(b).

Statutory and Regulatory Framework

4. Smart Forest was licensed by SBA as a Small Business Investment Company ("SBIC") pursuant to Section 301(c) of the Act, 15 U.S.C. §681(c) on January 19, 2001, SBA License No. 10/70-0195, solely to do business under the provisions of the Act and the regulations promulgated thereunder.

5. Smart Forest's sole general partner is Smart Forest General Partner, LLC, an Oregon limited liability corporation.

6. Smart Forest's SBIC License Application contains an acknowledgement by the Smart Forest that the SBIC would be operated in accordance with the Regulations and the Act at all times.

7. Section 308(c) of the Act, 15 U.S.C. §687(c), empowers SBA to prescribe regulations to carry out the provisions of the Act and to govern the operations of SBICs. SBA has duly promulgated such regulations, which are codified at Title 13 of the Code of Federal Regulations, Part 107 (the "Regulations").

8. Section 303 of the Act, 15 U.S.C. §683, authorizes SBA to provide leverage to licensed SBICs.

9. Pursuant to Section 303 of the Act, 15 U.S.C. §683, SBA provided Leverage to Smart Forest through the purchase and/or guaranty of Participating Securities, a form of Leverage, as those terms are defined under the Regulations, in the total principal amount of \$28,700,000 all of which is currently outstanding.

10. The Participating Securities described in paragraph 9, above, are subject to and incorporated by reference in the Regulations, including but not limited to the provision of 13 C.F.R. §§107.1820-1850 and §107.507.

11. Section 308(d) of the Act, 15 U.S.C. §687(d), provides that upon determination and adjudication of noncompliance or violation of the Act or the Regulations, all of the rights, privileges and franchises of a Licensee such as the Smart Forest may be forfeited and the company may be declared dissolved.

12. Section 311 of the Act, 15 U.S.C. §687c, provides that if a determination by SBA that a Licensee such as the Smart Forest, or any other person, has engaged in or is about to engage in any acts or practices which constitute or will constitute a violation of the Act or of any Rule or Regulation promulgated pursuant to the Act, or of any order issued under the Act, then SBA may make application for an injunction, and such Court shall have jurisdiction of such

action and grant a permanent or temporary injunction, or other relief without bond, upon a showing that such Licensee has engaged in or is about to engage in any such acts or practices.

The Court is authorized to appoint SBA to act as receiver for such Licensee.

COUNT ONE

CAPITAL IMPAIRMENT

13. Paragraphs 1 through 12 are incorporated herein by reference.

14. Section §107.1830(c) of the Regulations requires that Smart Forest not have a condition of Capital Impairment of greater than 60% (sixty percent) as defined under the Regulations.

15. Based on the SBA Form 468 submitted by Smart Forest for the period ending June 30, 2006, SBA determined that Smart Forest had a condition of Capital Impairment percentage, as that term is defined under the Regulations.

16. By letter dated September 13, 2006, SBA notified Smart Forest that SBA was placing Smart Forest into Restrictive Operations, pursuant to 13 C.F.R. § 107.1820(e)(3), and was imposing Restrictive Operation Remedies pursuant to 13 C.F.R. § 107.1820(f).

17. As a further consequence of its condition of capital impairment, by letter dated December 6, 2006, Smart Forest was notified that it was being transferred to liquidation status by SBA.

18. To date, Smart Forest has failed to cure its condition of Capital Impairment and \$28,700,000 in Participating Securities Leverage purchased by SBA remains outstanding. As of September 30, 2009, Smart Forest's capital impairment percentage had increased to 94%, well above the 60% maximum allowed under the Regulations.

19. Smart Forest's failure to cure its condition of Capital Impairment is a violation of §107.1830(b) of the Regulations.

20. Smart Forest's non-compliance with its terms of Leverage under 13 C.F.R. §107.1830(b) is also a violation of Section 13 C.F.R. §107.507(a) of the Regulations for nonperformance of the terms of its Participating Securities and nonperformance of its Application for SBIC License, which is a written agreement with SBA.

21. SBA has determined that Smart Forest is not in compliance with its terms of Leverage due to its uncured condition of Capital Impairment and is in violation of the Regulations, 13 C.F.R. §§107.1830(b) and 507(a).

22. As a consequence of Smart Forest's violation of 13 C.F.R. §§107.1830(b) and 507(a) of the Regulations, SBA is entitled to the injunctive relief provided under the Act, 15 U.S.C. §687(d) and 687c, including the appointment of SBA as Receiver of Smart Forest.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays as follows:

A. That injunctive relief, both preliminary and permanent in nature, be granted restraining Smart Forest, its managers, general partners, directors, officers, agents, employees, and other persons acting in concert or participation therewith from: (1) making any disbursements of any Smart Forest assets of the Fund; (2) using, investing, conveying, disposing, executing or encumbering in any fashion any Smart Forest or assets of the Fund, wherever located; and (3) further violating the Act or the Regulations promulgated thereunder.

B. That this Court determine and adjudicate Smart Forest's noncompliance with and violation of the Act and the Regulations promulgated thereunder.

C. That this Court, pursuant to 15 U.S.C. §687c enter the proposed Order and (1) take exclusive jurisdiction of Smart Forest and all of its assets, wherever located, (2) appoint SBA as receiver of Smart Forest for the purpose of marshaling and liquidating the assets of Smart Forest, satisfying the claims of creditors as determined by the Court and authorize SBA as Receiver to sell or transfer the interest of SBA and/or other limited partners in Smart Forest provided the express written consent of the affected parties whose interest is to be sold or transferred is obtained; and (3) grant such other relief as contained in the Consent Order filed simultaneously herewith.

D. That this Court grant such other relief it deems just and proper.

Dated this 5th day of January, 2010.

KENT S. ROBINSON
Acting United States Attorney
District of Oregon



SEAN E. MARTIN
Assistant United States Attorney

/s/ Arlene M. Embrey

Arlene M. Embrey
Trial Attorney
Office of General Counsel
U.S. Small Business Administration
409 Third Street, S.W. Seventh Floor
Washington, D.C. 20416
Telephone: (202) 205-6976
Facsimile: (202) 481-0324
arlene.embrey@sba.gov