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8 **UNITED STATES DISTRICT COURT**
9 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**
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11 **In Re FIRST ALLIANCE**)
12 **MORTGAGE COMPANY, a**)
13 **California corporation; FIRST**)
14 **ALLIANCE CORPORATION, a**)
15 **Delaware corporation; FIRST**)
16 **ALLIANCE MORTGAGE**)
17 **COMPANY, a Minnesota corporation;**)
18 **and FIRST ALLIANCE PORTFOLIO**)
19 **SERVICES, a Nevada corporation.**)

20 _____)
21 **AARP; IDA MAE FORREST,**)

22 **Appellants,**)

23 **v.**)

24 **FIRST ALLIANCE MORTGAGE**)
25 **COMPANY, et al.,**)

26 **Appellees.**)
27 _____)
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CASE NO. SA CV 01-539 DOC
(Consolidated with Case No. SA CV
01-540 DOC)

(Bankruptcy Case Nos. SA 00-12370
LR; SA 00-12371 LR; SA 00-12372
LR; and SA 00-12373 LR
(Jointly Administered)
Adversary Case No. SA 00-1324 LR))

ORDER
DENYING LEAVE TO APPEAL

Appellants AARP and Ida Mae Forrest¹ appeal from the order of the Bankruptcy Court enjoining them from pursuing claims against various officers and agents of First Alliance

¹ Ida Mae Forrest is one of the “California Six” who are pursuing various claims against First Alliance in related proceedings.

1 Mortgage Company², First Alliance Corporation, and First Alliance Portfolio Services
2 (collectively First Alliance)³ in separate actions pending in various state courts (the State Court
3 Actions), pursuant to section 105 of the Bankruptcy Code. The Court deems the notice of appeal
4 in this matter to be an application for leave to appeal. *See* Local Bankruptcy Rule 3.4. After
5 reviewing the briefs submitted, the record in this and related matters, and for the reasons set
6 forth below, the Court DENIES Appellants application for leave to appeal.

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8 **I.**

9 **BACKGROUND**

10 First Alliance has been in the business of subprime mortgage lending since 1971.
11 First Alliance's customers generally were borrowers who would have had difficulty obtaining
12 loans from conventional sources because of poor credit ratings or insufficient credit histories.
13 The loans, many of which were refinancings by homeowners who had developed significant
14 equity in their homes, typically were secured by the borrowers' first mortgages. As of 1999,
15 First Alliance or affiliated entities were licensed to operate in eighteen states and the District of
16 Columbia and serviced nearly \$900 million in loans.

17 On March 23, 2000, First Alliance filed a voluntary petition under Chapter 11 of the
18 Bankruptcy Code, because of the costs associated with the growing number of lawsuits filed
19 against it. This petition triggered the consolidation of most of the pending lawsuits into the
20 bankruptcy proceeding.

21 In addition to the suits against First Alliance, there are fifteen lawsuits, brought by 109
22 plaintiffs, in eight courts, in six different states, pending against various current and former
23 officers and employees of First Alliance. Most of these include claims against First Alliance's

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² Two separate entities in this litigation are named First Alliance Mortgage
27 Company. One is a California Corporation, the other a Minnesota Corporation. As
28 indicated by their names and the joint administration of these cases, both entities are
substantially related.

³ The parties sometimes refer to First Alliance as "FAMCO."

1 founder and chairman Brian Chisick. Because these individuals have not sought protection
2 under the Bankruptcy Code, the lawsuits were not enjoined by operation of the automatic stay.
3 *See* 11 U.S.C. § 362.

4 On April 26, 2000, First Alliance commenced an adversary proceeding in the Bankruptcy
5 Court to enjoin the continued prosecution of these actions against Chisick and the other non-
6 debtor defendants. On April 27, 2000, the Bankruptcy Court issued a temporary restraining
7 order against the prosecution of the State Court Actions. After a hearing, the Bankruptcy Court
8 granted a preliminary injunction on June 22, 2000, enjoining the prosecution of the State Court
9 Actions for a period of 95 days. On September 21, 2000, the Bankruptcy Court extended the
10 preliminary injunction for a period of 125 days (the First Extension Order).

11 On February 26, 2001, the Bankruptcy Court extended the preliminary injunction for 65
12 days (the Second Extension Order). On April 25, 2001, the Bankruptcy Court extended the
13 preliminary injunction for a 90 day period (the Third Extension Order). Appellants now seek
14 leave to appeal the Third Extension Order to this Court.

15 Since that time, several events in the First Alliance saga have taken place. Most
16 importantly, this Court withdrew the reference to the Bankruptcy Court of various predatory
17 lending claims against First Alliance brought by the Federal Trade Commission and others (the
18 FTC Action). These claims are similar and related to the state court actions now pending against
19 the non-debtor defendants.

20 On July 6, 2001, the Third Extension Order expired.⁴ Based in part on the changed
21 circumstances in the case, and the efforts to consolidate all the predatory lending claims in this
22 Court, First Alliance requested and was granted an extension of the preliminary injunction until
23 October 4, 2001 (the Fourth Extension Order).

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26 ⁴ The expiration of the Third Extension Order does not make this appeal moot, as
27 the continuing preliminary injunction is conduct “capable of repetition, yet evading
28 review” is well taken. *Weinstein v. Bradford*, 423 U.S. 147, 148-49, 96 S. Ct. 347, 348,
46 L. Ed. 2d 350 (1975).

1 Order, from which Appellants seek review, the Court has withdrawn the reference of the FTC
2 Action, which encompasses the disputes between the parties over First Alliance's lending
3 practices. The Third Extension Order has expired. The Fourth Extension Order will expire
4 shortly, and First Alliance has represented that it will not seek another extension of the
5 preliminary injunction before this Court has ruled on the Jurisdictional Motion.

6 The changed posture of the case means that this Court's order on the questions presented
7 in this appeal will have no effect. Even if the Court were to reverse the Bankruptcy Court's
8 Third Extension Order, the Fourth Extension Order would still be in effect, and the State Court
9 Actions would still be enjoined. The Fourth Extension Order will expire on October 4, 2001,
10 before the matter could be timely appealed and before the Bankruptcy Court could determine
11 whether to vacate the Fourth Extension Order, which was based on different facts from the Third
12 Extension Order.

13 Furthermore, if the Court grants First Alliance's Jurisdictional Motion, the preliminary
14 injunction against the state court actions will be moot, as the parties will then consolidate the
15 state court actions with the FTC Action in this Court.

16 Finally, First Alliance has represented that, if it chooses to seek any further injunctions of
17 the State Court Actions, it will do so in this Court, in the context of the FTC Action. Thus, this
18 Court will have the opportunity to make the initial determination on any future requests for
19 injunctions against the State Court Actions.

20 Because the appeal may become moot depending on the Court's ruling on the
21 Jurisdictional Motion; because the Court's ruling will have no effect on whether the State Court
22 Actions may proceed; and because this Court will make the initial determination on any future
23 preliminary injunctions regarding the State Court Actions, the issue of whether the Bankruptcy
24 Court abused its discretion in granting the Third Extension Order does not merit appellate review
25 by this Court.

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III.

CONCLUSION

Accordingly, Appellants' application for leave to appeal is DENIED. The Appeal is therefore DISMISSED.

IT IS SO ORDERED.

DATED: SEPTEMBER 24, 2001

DAVID O. CARTER
United States District Judge

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