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**UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA**

**In re FIRST ALLIANCE
MORTGAGE COMPANY, a
California corporation; FIRST
ALLIANCE CORPORATION, a
Delaware corporation; FIRST
ALLIANCE MORTGAGE
COMPANY, a Minnesota corporation;
and FIRST ALLIANCE PORTFOLIO
SERVICES, a Nevada Corporation,**

Debtors.

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

**FIRST ALLIANCE MORTGAGE
COMPANY, a California corporation;
FIRST ALLIANCE CORPORATION,
a Delaware corporation; FIRST
ALLIANCE MORTGAGE
COMPANY, a Minnesota corporation;
and BRIAN CHISICK,**

Defendants,

SARAH CHISICK,

Relief Defendant.

AND RELATED CASES

**CASE NO. SA CV 00-964 DOC (EEx)

(Bankruptcy Cases No. SA 00-12370
LR; SA 00-12371 LR; SA 00-12372
LR; and SA 00-12373 LR (Jointly
Administered); Adversary Case No.
Adv. SA 00-1659 LR)**

**ORDER RE SUBJECT MATTER
JURISDICTION**

1 Before the Court is the motion by First Alliance Mortgage Company,¹ First Alliance
2 Corporation, a Delaware corporation; First Alliance Portfolio Services (collectively First
3 Alliance)² for an order determining that the Court has jurisdiction over the claims of first various
4 current and former officers and employees of First Alliance who are named, along with First
5 Alliance, as defendants in various lawsuits now pending.³ After reviewing the moving and
6 responding papers, and oral arguments on October 15, 2001, and for the reasons set forth below,
7 the Court GRANTS the motion.⁴

8 **I.**
9 **BACKGROUND**

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

18
19 ¹ Two separate entities in this litigation are named First Alliance Mortgage
20 Company. One is a California Corporation, the other a Minnesota Corporation. As
21 indicated by their names and the joint administration of these cases, both entities are
22 substantially related.

23 ² The parties also refer to First Alliance as "FAMCO" or "Related Debtors."

24 ³ The specific lawsuits are enumerated in the attached matrix of lawsuits. This
25 matrix also includes a complaint pending in the Bankruptcy Court in this district and the
26 present case, which the Court does not address here.

27 ⁴ In its replying papers, and again at oral argument, the State of California
28 requested leave to file an amended pleading in this matter, to effectuate this order.
Accordingly, the State of California's request to file an amended pleading is GRANTED.

1 In recent years, a number of lawsuits were filed against First Alliance, alleging that its
2 lending practices violated various consumer protection laws. First Alliance's lending practices
3 became the focus of national publicity when the *New York Times* and the television program
4 "20/20" carried stories that exposed the company's allegedly deceptive practices and highlighted
5 the number of lawsuits that had been filed against it. A few days later, on March 23, 2000, First
6 Alliance filed a voluntary petition under Chapter 11 of the Bankruptcy Code, 11 U.S.C. §§ 101-
7 1330, because of the costs associated with the growing number of lawsuits.

8 On October 3, 2000, the Federal Trade Commission brought this action for violation of
9 federal lending laws. Several other litigants pursued their claims against First Alliance in the
10 bankruptcy proceedings. The states of California, Illinois, Arizona, New York, Florida, and
11 Massachusetts filed either proofs of claim or adversary complaints against First Alliance. The
12 AARP, the "California Six" (consisting of Velda Durney, Lucrecia Wilder, Mary Ryan, Ida Mae
13 Forrest,⁵ Carol Hong, and Henry Hong), and two sets of class action claimants (consisting of
14 Jacqueline Bowser, Irene Huston Frank G. Aiello, Nicolena Aiello, Paul Carabetta, Lenore
15 Carabetta, Vito Cicci, Stella Cicci, Veronica Maines, Thaddeus Zychlinski, and Marissa
16 Zychlinski as the named plaintiffs) brought adversary proceedings again. After various
17 procedural maneuvers, this Court withdrew the reference to the Bankruptcy Court and
18 consolidated those matters into the present action. *See FTC v. First Alliance Mortgage Co. (In*
19 *re First Alliance Mortgage Co.)*, 264 B.R. 634 (C.D. Cal. 2001); *FTC v. First Alliance Mortgage*
20 *Co.*, No. SA CV 00-1174 DOC (Eex) (Apr. 30, 2001) (Slip Op.); *AARP v. First Alliance*
21 *Mortgage Co. (In Re First Alliance Mortgage Co.)*, No SA CV 01-541 DOC (Sept. 24, 2001)
22 (Slip Op.).

23 The remaining lawsuits against First Alliance were stayed under the provisions of the
24 automatic stay. *See* 11 U.S.C. § 362. However, many of these suits were also prosecuted
25 against several current or former First Alliance Officers (the Individual Defendants), including

26
27 ⁵ The Court is informed that both Ms. Ryan and Ms. Forrest have passed away
28 during the pendency of this case. Their estates continue the actions in their name.

1 Brian Chisick, First Alliance’s founder and majority stockholder. Suits brought by states against
2 First Alliance and the individual defendants were allowed to proceed pursuant to the police
3 powers exception to the automatic stay, 11 U.S.C. § 362(b)(4). *FTC v. First Alliance Mortgage*
4 *Co. (In re First Alliance Mortgage Co.)*, 264 B.R. at 651. On April 27, 2000, the Bankruptcy
5 court entered a preliminary injunction prohibiting suits by private litigants from proceeding
6 against the Individual Defendants in cases where First Alliance was a party. After a series of
7 extensions, that injunction expired on October 4, 2001. Accordingly, there are now sixteen
8 lawsuits pending in various state courts against First Alliance that may proceed against the
9 individual defendants (the State Court Actions).

10 The parties here have noted that proceeding with these lawsuits will deplete the resources
11 of the estate, divert the attention of many of the lawyers also present in this case, and revolve
12 around the same or similar factual issues as the case against the FTC. All of the states have
13 represented to the Court that they would pursue their litigation against the individual defendants
14 in this proceeding, provided that the Court has jurisdiction. Accordingly, First Alliance filed this
15 motion seeking an order determining the existence of subject matter jurisdiction.

16 The State Court Actions all make similar allegations against First Alliance. The State
17 Court Actions allege that First Alliance fraudulently induced its customers to take out loans from
18 First Alliance by: engaging in a fraudulent telemarketing program to induce customers to take
19 out loans with First Alliance; training employees to use presentations (known as “scripts” or
20 “tracks”) to potential customers to confuse the customers and distract their attention from the
21 negative loan terms; failing to disclose material terms of the loans; making false statements
22 about the terms of the loans; charging high and unconscionable loan origination fees; charging
23 high and unconscionable closing costs; advertising false “teaser” interest rates, which were
24 increased shortly after the loan was closed; making false Truth In Lending Act disclosures. The
25 allegations against the Individual Defendants in all of these cases stem from their capacity as
26 First Alliance officers, loan agents, and other employees. These allegations are substantially the
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1 same as the allegations now pending in the instant case.⁶

2 **II.**

3 **DISCUSSION**

4
5 No party opposes First Alliance’s motion. Such agreement by litigants is usually a
6 welcome development, as it eases the burden on the Court. Here, however, the Court is required
7 to undertake an independent review of subject matter jurisdiction.

8
9 **A. Supplemental Jurisdiction**

10 First Alliance asserts that this Court has supplemental jurisdiction over the State Court
11 Action claims against the Individual Defendants because those actions form the same “case or
12 controversy” as the predatory lending claims against First Alliance, now pending in this Court.

13 [I]n any civil action of which the district courts have original
14 jurisdiction, the district courts shall have supplemental jurisdiction
15 over all other claims that are so related to claims in the action within
16 such original jurisdiction that they form part of the same case or
17 controversy under Article III of the United States Constitution. Such
18 supplemental jurisdiction shall include claims that involve the
19 joinder or intervention of additional parties.

20 28 U.S.C. § 1367(a). Section 1367 codifies the doctrine of supplemental jurisdiction articulated
21 by the Supreme Court in *Gibbs v. United Mine Workers*, 383 U.S. 715, 725, 86 S. Ct. 1130,

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23
24 ⁶ The present case includes: an action and proof of claim by the FTC for violation
25 of various federal lending laws; actions and proofs of claim by California, Illinois,
26 Arizona, New York, Florida, and Massachusetts for violation of state consumer
27 protection laws; actions and proofs of claim by the AARP and the California Six as
28 private attorneys general for violation of California Business and Professions Code; 2000
individual proofs of claim for violation of various lending laws; and a class action and
class proof of claim for violation of various lending laws.

1 1138, 16 L. Ed. 2d 218 (1966). See H.R. Rep. No. 734, 101st Cong. 2d Sess (1990) reprinted in
2 1990 U.S.C.C.A.N. 6860, 6874-6875 & n.15. In *Gibbs*, the Supreme Court announced the
3 principle that pendent (or supplemental) jurisdiction exists whenever a state and federal cause of
4 action “derive from a common nucleus of operative fact.” 383 U.S. at 725, 86 S. Ct. at 1138.
5 The basic question in determining whether a claim is part of the same “case or controversy” is
6 whether, absent the issue of jurisdiction, a plaintiff would ordinarily try all claims in one
7 proceeding.

8 Section 1367 encompasses the concept of pendent-party jurisdiction, where a plaintiff
9 may bring suit against a second defendant in federal court provided its action against the first
10 defendant is supported by a federal cause of action. Indeed, section 1367 was enacted primarily
11 to overturn the Supreme Court’s decision in *Finley v. United States*, 490 U.S. 545, 109 S. Ct.
12 2003, 104 L. Ed. 2d 593 (1989), which held that there was no statutory authority for pendent-
13 party jurisdiction. See Thomas Jamison, *Pendent Party Jurisdiction: Congress Giveth What the*
14 *Eighth Circuit Taketh Away*, 17 W.M.L.R. 753 (1991). *Finley*, however, did not deny that when
15 the facts of a case were such that the claims against two separate defendants derived from a
16 “common nucleus of operative fact,” that the Constitution authorized jurisdiction. 490 U.S. at
17 552, 109 S. Ct. at 2008.

18 The claims against First Alliance here and the claims against Individual Defendants in the
19 State Court Actions derive from a common nucleus of operative fact. Plaintiffs in this case, just
20 like the plaintiffs in the State Court Actions allege that First Alliance engaged in a number of
21 predatory lending activities in violation of state and federal laws. Because the present case is
22 properly before this Court pursuant to 28 U.S.C. §§ 1331 (federal question jurisdiction) and
23 1334(a) (bankruptcy), the Court has the authority to exercise jurisdiction over the claims against
24 the Individual Defendants pursuant to 28 U.S.C. § 1367.

25
26 **B. “Related To” Jurisdiction**

27 First Alliance also contends that this Court has jurisdiction over the claims against the
28

1 Individual Defendants pursuant to 28 U.S.C. § 1334(b) because they are “related to” a pending
2 bankruptcy case.

3 In determining whether a matter is “related to” a bankruptcy proceeding under section
4 1334(b), the question is whether the outcome of a civil proceeding “could conceivably have any
5 effect on the estate being administered in bankruptcy. *Pacor, Inc. v. Higgins*, 743 F.2d 984, 994
6 (3d Cir. 1984), *overruled on other grounds by Things Remembered, Inc. v. Petrarca*, 516 U.S.
7 124, 136 116 S. Ct. 494, 500, 133 L. Ed. 2d 461 (1995). ; *see also In re Feitz*, 852 F.2d 455, 457
8 (9th Cir. 1988) (adopting the *Pacor* test).

9 The leading Ninth Circuit case on the issue is *Kaonohi Ohana, Ltd. v. Sutherland*, 873
10 F.2d 1302 (9th Cir. 1989). There, the debtor breached a land-sale contract with plaintiff and
11 instead sold to another buyer, Sylvester Stallone. *Id.* at 1304. The plaintiff then instituted an
12 adversary action in the debtor’s bankruptcy for specific performance against Stallone. *Id.* at
13 1304-05. Even though debtor was not the defendant in that action, the Ninth Circuit held that it
14 was “related to” the bankruptcy because specific performance against Stallone would reduce the
15 amount of contract damages due to plaintiff. *Id.* at 1307. The adversary action therefore would
16 have a significant effect on the bankruptcy proceeding. *Id.*

17 Here, the suits against the Individual Defendants are “related to” the bankruptcy
18 proceeding because First Alliance and the Individual Defendants could become joint and
19 severally liable for the damages in those cases. The estate’s liability could be reduced if the
20 plaintiffs in the State Court Actions are successful.⁷

21 The Official Joint Borrowers Committee (Borrowers Committee) brings two concerns to
22 the Court’s attention with respect to “related to” jurisdiction. First, the Borrowers Committee

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24 ⁷ First Alliance asserts two other grounds for jurisdiction under section
25 1334(b)—that First Alliance and the Individual Defendants are joint claimants on an
26 insurance policy and that successful suits against the Individual Defendants could create
27 claims for indemnity by the Individual Defendants against the estate. The State of
28 California disagrees. Because the Court finds jurisdiction under section 1334(b) because
of joint and several liability, it need not resolve the issue.

1 points to *Bethlahmy v. Kuhlman (In re ACI-HDT Supply Co.)*, 205 B.R. 231 (9th Cir. BAP
2 1997). There, class action plaintiffs brought suit against the officers of debtor for an alleged
3 ponzi scheme. *Id.* at 233. After the defendants removed the case to the Bankruptcy Court, the
4 Bankruptcy Appellate Panel held determined that there was no “related to” jurisdiction because
5 any claims that the officers might have against the debtor were merely speculative. *Id.* at 237-
6 238. *Bethlahmy* does not apply here. There is nothing to show that the debtor itself was being
7 sued for the alleged ponzi-scheme, as is the case here. Moreover, the debtor in *Bethlahmy* was
8 not named as a defendant. *Id.* at 232. Here, First Alliance is named in all the State Court
9 Actions. Finally, the Ninth Circuit’s decision in *Kaonohi Ohana* permits the Court to exercise
10 jurisdiction. To the extent that *Bethlahmy* holds the opposite, it is in error.

11 Second, the Borrowers Committee points to the mandatory abstention provisions
12 contained in section 1334(c)(2), which states:

13 Upon timely motion of a party in a proceeding based upon a State
14 law claim or State law cause of action, related to a case under Title
15 11 but not arising under Title 11 or arising in a case under Title 11,
16 with respect to which an action could not have been commenced in a
17 court of the United States absent jurisdiction under this section, the
18 district court shall abstain from hearing such proceeding if an action
19 is commenced, and can be timely adjudicated, in a State forum of
20 appropriate jurisdiction.

21 28 U.S.C. § 1334(c)(2). Whether motions for abstention will be timely filed is yet to be seen, so
22 the question is speculative. However, the State Court Actions do not appear to be cases that
23 “could not have been commenced in a court of the United States absent jurisdiction under” the
24 Bankruptcy Code. Most of the claims are include allegations of violation of the Federal Truth in
25 Lending Act, 15 U.S.C. § 1607(c). These cases are not mere contract cases between citizens of
26 the same state, but claims that have a potential federal cause of action. Construing the abstention
27 provision narrowly, *see In re Hillsborough Holdings Corp.*, 123 B.R. 1004, 1010 (Bankr. M.D.
28

1 Fla. 1990), the abstention provision would not appear to apply. Finally, the party moving for
2 abstention will bear the burden of demonstrating that a state court action can be timely
3 adjudicated. *See In re Nationwide Roofing & Sheet Metal, Inc.*, 130 B.R. 768, 779 (Bankr. S. D.
4 Ohio 1991).

5 The district court therefore has subject matter jurisdiction over this matter pursuant to 28
6 U.S.C. § 1334(b).

7
8 **III.**

9 **CONCLUSION**

10 Accordingly, First Alliance's motion for an order determining jurisdiction is GRANTED.

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13 IT IS SO ORDERED.
14 DATED: October 16, 2001

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16 DAVID O. CARTER
17 United States District Judge
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