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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

JAMES F. DODARO, as an)
individual and on behalf)
of all other similarly)
situated,)
Plaintiff,)
v.)
STANDARD PACIFIC CORP.;)
STANDARD PACIFIC HOMES,)
INC.; STANDARD PACIFIC)
MORTGAGE, INC.; and DOES)
1 through 10, inclusive,)
Defendants.)

Case No. EDCV 09-01666-VAP
(OPx)

[Motion filed on January 22,
2010]

**ORDER GRANTING DEFENDANTS'
MOTION TO DISMISS FOR LACK
OF STANDING, WITH PREJUDICE,
AND DENYING DEFENDANTS'
MOTION TO STRIKE AS MOOT**

Defendants' Motions to Dismiss and to Strike came before the Court for hearing on March 15, 2010. After reviewing and considering all papers filed in support of, and in opposition to, the Motions, as well as the arguments advanced by counsel at the hearing, the Court GRANTS the Motion to Dismiss and DENIES the Motion to Strike as moot.

1
2 **I. BACKGROUND**

3 **A. Plaintiff's Allegations**

4 Plaintiff James F. Dodaro ("Plaintiff") alleges he
5 purchased a new residence in November 2005 in Riverside
6 County, California from Standard Pacific Homes, made a
7 down payment of about 60% of the total purchase price,
8 financed the balance of the purchase through Family
9 Lending Services, Inc. (now Standard Pacific Mortgage),
10 and still lives in the residence. (First Amended
11 Complaint ("FAC") ¶ 35.)

12
13 Plaintiff brings this putative class action on behalf
14 of himself and a national class including "[a]ll Standard
15 Pacific Homes customers who purchased a new Standard
16 Pacific Homes house from January 1, 2004, through
17 December 31, 2006, and put 20% or more down toward the
18 purchase of the house[,] or alternatively, "a class of
19 new Standard Pacific Homes customers whose homes are
20 located in California." (FAC ¶¶ 48-49.)

21
22 Plaintiff alleges "on information and belief" that
23 before 2004, Defendants Standard Pacific Corp., doing
24 business as Standard Pacific Homes, and Standard Pacific
25 Mortgage, Inc. (collectively, "Defendants" or "Standard
26 Pacific Defendants") implemented a "scheme" to increase
27 the number of houses sold in Plaintiff's neighborhood and
28 the amount of profit per sale. (FAC ¶ 18.) The "scheme"

1 was intended to "convince government entities, then the
2 community, and finally buyers that Defendants were
3 building a traditional neighborhood with stable owners
4 who occupied their homes and who were vested in the
5 community and the neighborhood." (FAC ¶ 19.) "Implicit
6 in this marketing scheme was that Defendants were making
7 a good-faith effort to sell homes to buyers who
8 [Defendants] expected could afford to buy the houses and
9 would be stable neighbors." (Id.)

10
11 Plaintiff alleges that he was provided "marketing
12 materials that depicted the community as a stable,
13 family[-]based neighborhood." (FAC ¶¶ 35, 36.)
14 Plaintiff also alleges "on information and belief" that
15 Defendants represented that Standard Pacific does not
16 sell homes to investors and discourages speculation.
17 (FAC ¶ 38.)

18
19 Plaintiff alleges Defendants engaged in a scheme to
20 market the houses to, and provide financing for,
21 "unqualified buyers who posed an abnormally high risk of
22 foreclosure . . . to increase both the number of sales
23 and the prices of the houses in same neighborhoods in
24 which Defendants were selling to traditionally qualified
25 and low-foreclosure- risk buyers." (FAC ¶ 20.)
26 Plaintiff generally alleges that Defendants assisted and
27
28

1 encouraged the "unqualified" buyers to appear qualified.
2 (FAC ¶ 23.)

3
4 Plaintiff asserts that Defendants "concealed and
5 intentionally failed to disclose to prospective buyers .
6 . . . that numerous houses in the neighborhoods were being
7 purchased by unqualified and high-foreclosure-risk
8 buyers, despite Defendants' knowledge that this could,
9 and likely would over time, have a material negative
10 effect on the value and desirability of the house and the
11 neighborhood." (FAC ¶ 29.) Plaintiff alleges Defendants
12 also failed to disclose that "they had sold houses, and
13 planned to sell houses in the future, to investors who
14 would not occupy the houses." (FAC ¶ 44.)

15
16 Plaintiff alleges two theories of harm stemming from
17 Defendants' conduct. First, Plaintiff alleges he "paid
18 inflated prices for [his] house[]" as a result of
19 Defendants' failure to disclose that "Defendants had sold
20 houses . . . to unqualified and high-foreclosure-risk
21 buyers. . . [and] to investors who would not occupy the
22 houses." (FAC ¶¶ 45, 48.) Secondly, Plaintiff alleges
23 he suffered an injury years after purchasing his house
24 when the real estate market declined and the
25 "unqualified" buyers defaulted on their loans and lost
26 their houses in foreclosure proceedings, which led to a

27
28

1 decline in the value of Plaintiff's residence. (FAC ¶
2 47.)

3
4
5 **B. Procedural History**

6 On September 3, 2009, Plaintiff filed a putative
7 class action against the Standard Pacific Defendants. On
8 the same day, Plaintiff's counsel filed seven other
9 similar class actions¹ ("Homebuilder Actions") alleging
10 that the homebuilder defendants and their mortgage
11 lending affiliates engaged in conduct that "artificially
12 inflated" the purchases prices of plaintiffs' residences
13 and eventually reduced their value.

14
15 On October 23, 2009, the Standard Pacific Defendants
16 filed a "Motion to Consolidate," which sought to
17 consolidate the eight Homebuilder Actions. The Court
18

19 ¹ The Homebuilder Actions are:

- 20 • Dodaro v. Standard Pacific Corp., et al., ED09-
21 CV1666-VAP (OPx)
22 • Stephens, et al. v. Lennar Corp, et al., ED09-CV1668-
23 SGL (DTBx)
24 • Lumalu et al. v. Richmond American Homes Corp., et
25 al., ED09-CV1669-SGL (OPx)
26 • Oneto v. The Ryland Group, Inc., et al., ED09-CV1670-
27 SGL (DBTx)
28 • Maya, et al. v. Centex Corp., et al., ED09-CV1671-SGL
(OPx)
• Martinez, et al. v. D.R. Horton, et al., ED09-CV1672-
VAP (DBTx)
• Nielson, et al. v. Shea Homes, Inc, et al., ED09-
CV1673-SGL (DTBx)
• Kelly, et al. v. Beazer Homes USA, Inc., et al.,
ED09-CV1674-SGL (DTBx)

1 denied the Motion to Consolidate. On November 18, 2009,
2 the Homebuilder Actions were transferred to this Court.
3 On December 21, 2009, Plaintiff filed the FAC, which
4 removed Defendant Standard Pacific Homes, Inc. and added
5 allegations regarding the two remaining defendants,
6 Standard Pacific Corp, doing business as Standard Pacific
7 Homes, and Standard Pacific Mortgage, Inc. The substance
8 of the claims remains unchanged.

9
10 Plaintiff alleges five claims: (1) fraud; (2)
11 negligent misrepresentation; (3) violation of
12 California's Unfair Business Practices Act, Cal. Bus. &
13 Prof. Code §§ 17200, et seq.; (4) violation of Cal. Bus.
14 & Prof. Code §§ 17500, et seq.; and (5) breach of the
15 implied covenant of good faith and fair dealing.

16
17 On January 22, 2010, Defendants filed: (1) a Motion
18 to Dismiss the First Amended Complaint ("Motion"), and
19 (2) a Motion to Strike Portions of the First Amended
20 Complaint. In their Motion to Dismiss, Defendants
21 incorporate by reference the arguments advanced by
22 defense counsel in Stephens, et al. v. Lennar Corp, et
23 al., ED09-CV1668-VAP (DTBx) and Nielson, et al. v. Shea
24 Homes, Inc, et al., ED09-CV1673-VAP (DTBx). (Mot. at 3-
25 4.) On February 22, 2010, Plaintiff filed Opposition² to

26 _____
27 ² Counsel for the plaintiffs the eight Homebuilder
28 Actions divides the subject matter of their Oppositions
(continued...)

1 both Motions. On March 4, 2010, Defendants filed a Reply
2 for both Motions.

3
4 Defendants argue the FAC should be dismissed for the
5 following reasons: (1) Plaintiff lacks constitutional
6 standing to bring this action; and (2) Plaintiff fails to
7 state a claim as to each cause of action under 12(b)(6).
8 (Mot. at 1.)

9
10 **II. LEGAL STANDARD FOR MOTION TO DISMISS UNDER**
11 **RULE 12(b)(6)**

12 Rule 12(b)(6) allows a party to bring a motion to
13 dismiss for failure to state a claim upon which relief
14 can be granted. As a general matter, the Federal Rules
15 require only that a plaintiff provide "'a short and plain
16 statement of the claim' that will give the defendant fair
17 notice of what the plaintiff's claim is and the grounds
18 upon which it rests." Conley v. Gibson, 355 U.S. 41, 47
19 (1957) (quoting Fed. R. Civ. P. 8(a)(2)); Bell Atlantic

20
21 ²(...continued)
22 to Homebuilder Defendants' Motions as follows:
23 • Stephens, et al. v. Lennar Corp, et al., ED09-CV1668-
24 VAP (DTBx): Plaintiffs' Opposition addresses
25 constitutional standing ("Stephens Opp'n").
26 • Oneto v. The Ryland Group, Inc., et al., ED09-CV1670-
27 VAP (DBTx): Plaintiffs' Opposition addresses
28 Plaintiffs' UCL claims and claims for breach of the
implied covenant of good faith and fair dealing
("Oneto Opp'n").
• Nielson, et al. v. Shea Homes, Inc, et al., ED09-
CV1673-VAP (DTBx): Plaintiffs' Opposition addresses
Rule 9 ("Nielson Opp'n").

1 Corp. v. Twombly, 550 U.S. 544, 555 (2007). In addition,
2 the Court must accept all material allegations in the
3 complaint -- as well as any reasonable inferences to be
4 drawn from them -- as true. See Doe v. United States,
5 419 F.3d 1058, 1062 (9th Cir. 2005); ARC Ecology v. U.S.
6 Dep't of Air Force, 411 F.3d 1092, 1096 (9th Cir. 2005).

7
8 "While a complaint attacked by a Rule 12(b)(6)
9 motion to dismiss does not need detailed factual
10 allegations, a plaintiff's obligation to provide the
11 'grounds' of his 'entitlement to relief' requires more
12 than labels and conclusions, and a formulaic recitation
13 of the elements of a cause of action will not do." Bell
14 Atlantic, 550 U.S. at 555 (citations omitted). Rather,
15 the allegations in the complaint "must be enough to raise
16 a right to relief above the speculative level." Id.

17
18 In other words, the allegations must be plausible on
19 the face of the complaint. See Ashcroft v. Iqbal, 556
20 U.S. ___, 129 S. Ct. 1937, 1949 (2009). "The
21 plausibility standard is not akin to a 'probability
22 requirement,' but it asks for more than a sheer
23 possibility that a defendant has acted unlawfully. Where
24 a complaint pleads facts that are 'merely consistent
25 with' a defendant's liability, it stops short of the line
26 between possibility and plausibility of 'entitlement to

1 relief.'" Id. (citations and internal quotations
2 omitted).

3
4 Although the scope of review is limited to the
5 contents of the complaint, the Court may also consider
6 exhibits submitted with the complaint, Hal Roach Studios,
7 Inc. v. Richard Feiner & Co., 896 F.2d 1542, 1555 n.19
8 (9th Cir. 1990), and "take judicial notice of matters of
9 public record outside the pleadings," Mir v. Little Co.
10 of Mary Hosp., 844 F.2d 646, 649 (9th Cir. 1988).

11
12 "Failure to properly allege standing is a ground for
13 dismissal under Rule 12(b)(6)." MAI Sys. Corp. v. UIPS,
14 856 F. Supp. 538, 539 (N.D. Cal. 1994), citing W. Mining
15 Council v. Watt, 643 F.2d 618 (9th Cir. 1980).

16
17 **III. DISCUSSION**

18 Article III of the Constitution gives federal courts
19 jurisdiction over "cases and controversies." U.S. Const.
20 Art. III, § 2, cl. 2. "In essence the question of
21 standing is whether the litigant is entitled to have the
22 court decide the merits of the dispute or of particular
23 issues." Warth v. Seldin, 422 U.S. 490, 498 (1975).
24 Standing, therefore, is a threshold issue in every
25 federal case. Elk Grove Unified Sch. Dist. v. Newdow,
26 524 U.S. 1, 11 (2004) ("In every federal case, the party
27 bringing the suit must establish standing to prosecute
28

1 the action."); Warth, 422 U.S. at 517-18; McMichael v.
2 County of Napa, 709 F.2d 1268, 1269 (9th Cir. 1983)
3 ("Before the judicial process may be invoked, a plaintiff
4 must 'show that the facts alleged present the court with
5 a 'case or controversy' in the constitutional sense and
6 that [he] is a proper plaintiff to raise the issues
7 sought to be litigated.'"), citing Linda R.S. v. Richard
8 D., 410 U.S. 614, 616 (1973).

9
10 To satisfy the "case or controversy" requirement, a
11 plaintiff "must demonstrate that he has suffered an
12 'injury in fact'" that a favorable judgment will redress.
13 Whitmore v. Arkansas, 495 U.S. 149, 155 (1990); Newdow,
14 542 U.S. at 12, citing Lujan v. Defenders of Wildlife,
15 504 U.S. 555, 560-561 (1992). In other words, a
16 plaintiff must demonstrate: (1) he has suffered an
17 "'injury in fact' -- an invasion of a legally protected
18 interest which is (a) concrete and particularized, and
19 (b) actual or imminent, not conjectural or hypothetical";
20 (2) there is a causal connection between the injury and
21 the conduct complained of -- that is, the injury is
22 "fairly traceable" to the challenged action of the
23 defendant, and not the result of the independent action
24 of some third party not before the court; and (3) it is
25 "likely," as opposed to merely "speculative," that the
26 injury will be redressed by a favorable judicial

1 decision. Lujan, 504 U.S. at 560-61 (footnote,
2 citations, and quotation marks omitted).

3
4 The party invoking federal jurisdiction bears the
5 burden of establishing the elements of standing. Lujan,
6 504 U.S. at 561, citing FW/PBS, Inc. v. Dallas, 493 U.S.
7 215, 231 (1990); Warth, 422 U.S. at 508. As the three
8 elements of standing "are not mere pleading requirements
9 but rather an indispensable part of the plaintiff's case,
10 each element must be supported in the same way as any
11 other matter on which the plaintiff bears the burden of
12 proof, i.e., with the manner and degree of evidence
13 required at the successive stages in litigation." Lujan,
14 504 U.S. at 561; Lujan v. Nat'l Wildlife Fed'n, 497 U.S.
15 871, 883-89 (1990); Gladstone Realtors v. Village of
16 Bellwood, 441 U.S. 91, 114-15 & n.31 (1979); Simon v. E.
17 Kentucky Welfare Rights Org., 426 U.S. 26, 45 & n.25
18 (1917); Warth, 422 U.S. at 527 & n.6). "At the pleading
19 stage, general factual allegations of injury resulting
20 from the defendant's conduct may suffice" Id.,
21 citing Nat'l Wildlife Fed'n, 497 U.S. at 889.

22
23 Plaintiff must satisfy Article III standing
24 requirements to assert each of his claims in federal
25 court. As Plaintiff's claims all are founded upon the
26 same alleged injuries, the Court's analysis applies to
27 each of them. Plaintiff fails to establish standing
28

1 because he has not pled an injury in fact and has not
2 shown how his alleged injuries are "fairly traceable" to
3 Defendants' alleged actions.

4
5 **A. Injury in Fact**

6 Defendants first focus on whether Plaintiff has
7 suffered a "concrete and particularized, and actual or
8 imminent" injury necessary to meet the first element of
9 Article III standing. Lujan, 504 U.S. at 560-61. To
10 satisfy the "injury in fact" requirement, "[t]he
11 plaintiff must show that he has sustained or is
12 immediately in danger of sustaining some direct injury as
13 a result of the [defendant's] conduct and the injury or
14 threat of injury must be both real and immediate, not
15 conjectural or hypothetical." City of Los Angeles v.
16 Lyons, 461 U.S. 95, 101-02 (1983) (citations omitted);
17 Lujan, 504 U.S. at 560 ("[By injury in fact we mean] an
18 invasion of a legally protected interest which is (a)
19 concrete and particularized, . . . and (b) actual or
20 imminent, not 'conjectural' or 'hypothetical'.").

21
22 As noted above, Plaintiff alleges he was injured by
23 (1) paying a "inflated" purchase price for his house as a
24 result of the "buying frenzy" created because Defendants
25 sold houses to "unqualified" buyers ("overpayment
26 theory") (FAC ¶¶ 31, 34), and (2) a reduction in the
27 value of his property caused by Defendants' wrongful acts
28

1 and omissions ("reduced-value theory") (FAC ¶¶ 31, 47).
2 These alleged harms fall short of a concrete, particular,
3 and actual injury.

4
5 **1. Reduced-Value Theory**

6 The Court first considers Plaintiff's reduced-value
7 theory. Plaintiff still owns his house, so his
8 assertions of loss are conjectural. Any loss (or gain)
9 -- presumably measured against the initial purchase price
10 -- cannot be ascertained, nor measured, unless and until
11 the owner sells the house. See Phillips v. Frank, 295
12 F.2d 629, 632 (9th Cir. 1961) (recognizing that a gain or
13 loss in real property cases is determined at the time of
14 sale).

15
16 Moreover, the cause of any such loss cannot be
17 determined until that time as well. In other words,
18 Plaintiff has alleged only harm which, rather than being
19 specific and concrete, is general and tied so closely to
20 pervasive economic conditions and harms, that it does not
21 suffice as an allegation of direct injury. See First
22 Nationwide Bank v. Gelt Funding Corp., 27 F.3d 763, 770
23 (2d Cir. 1994) (recognizing that a number of variables
24 can affect real estate values).

25
26 Other courts have reached the same conclusion when
27 faced with nearly identical allegations. See Kaing v.
28

1 Pulte Homes, Inc., No. 09-5057, 2010 WL 625365, at *5-6
2 (N.D. Cal. Feb. 18, 2010); Tingley v. Beazer Homes Corp.,
3 No. 07-176, 2008 WL 1902108, at *5, n.3 (W.D.N.C. April
4 25, 2008) ("harm is only realized if Plaintiffs sell
5 their home."); Green v. Beazer Homes Corp., No. 07-1098,
6 2007 WL 2688612, at *3 (D.S.C. Sept. 10, 2007)
7 (dismissing the action because "Plaintiff does not . . .
8 suggest that she or any of her other similarly 'injured'
9 neighbors have realized this decrease in value (e.g., as
10 a result of sale of the home).").

11
12 In Kaing, the district court found that a plaintiff
13 in a putative class action against defendant homebuilders
14 lacked standing to assert a theory "that she ha[d] been
15 injured because [the homebuilders'] lending practices
16 caused widespread foreclosures in her neighborhood,
17 [which had] driven down the value of her house." 2010 WL
18 625365, at *5. There, the plaintiff alleged that the
19 defendants "marketed the neighborhoods as stable and
20 desirable neighborhoods, while becoming even more
21 aggressive in selling homes to unqualified and high-
22 foreclosure-risk buyers" Id. at *2. The
23 plaintiff alleged that high foreclosure rates in her
24 neighborhood decreased the value of her house by over
25 50%. Id.

1 Furthermore, the Kaing defendant homebuilders'
2 misconduct also allegedly "result[ed] in abandoned
3 houses; multiple families living in one home; transient
4 neighbors with no long-term ties to the neighborhood;
5 unfinished yards and unkempt yards; and, in some cases,
6 increased crime." Id. at *5. There, as here, the
7 plaintiff still owned her residence when she brought the
8 action. Id. at *1-2. Also like the Plaintiff here, the
9 Kaing plaintiff alleged she was harmed by the homebuilder
10 defendants' failure to provide her with a disclosure that
11 "Defendants had sold houses, and would sell houses in the
12 future, to unqualified and high-foreclosure-risk buyers."
13 Id. at *2.

14
15 Distinguishing "general economic harms" from the harm
16 in cases where a plaintiff's injury arose from a physical
17 change to the neighborhood's environment, the Kaing court
18 noted, "[A] decline in value that is tied to a purely
19 economic change to a neighborhood is much more difficult
20 to characterize as 'concrete and particularized, and
21 actual or imminent.' Such economic conditions are likely
22 to change with the broader economy, and any decline in
23 housing value can potentially evaporate before Plaintiff
24 has suffered a concrete injury, even in the absence of
25 redress from the courts." Id. at *5, citing Lujan, 504
26 U.S. at 560-61. As the plaintiff had not sold, or even
27 attempted to sell, her house under the changed economic
28

1 conditions, the court concluded, "[I]t is not clear that
2 the diminished value of her house is cognizable as an
3 'injury in fact.'" Id.

4
5 In reaching its conclusion, the Kaing court relied on
6 two other cases arising under similar circumstances --
7 Tingley and Green. In both cases, the plaintiffs filed
8 putative class actions against defendant homebuilders,
9 claiming the defendants targeted low-income purchasers,
10 which resulted in high rates of foreclosure in
11 plaintiffs' neighborhoods and consequently decreased the
12 value of the plaintiffs' residences. See Tingley, 2008
13 WL 1902108, at *1-2; Green, 2007 WL 2688612, at *2.

14
15 Although the Tingley court premised its holding on
16 lack of causation rather than injury in fact, the court
17 noted, "Since the reduced value about which Plaintiffs
18 complain would have resulted from an economic glut of
19 supply, then such harm is only realized if Plaintiffs
20 sell their home during such glut. If Plaintiffs chose to
21 remain in their home until more favorable economic
22 conditions arrive, then they will have realized no loss
23 at all." Tingley, 2008 WL 1902108, at *5, n.3.

24
25 The Green court adopted similar reasoning, holding
26 that although the plaintiff alleged an injury in the form
27 of a generalized loss in the potential market value of
28

1 her house due to excessive foreclosures on other houses
2 in her neighborhood, she did not "suggest that she or any
3 of her other similarly 'injured' neighbors [had] realized
4 this decrease in value (e.g., as a result of sale of the
5 home)." Green, 2007 WL 2688612, at *3. The court thus
6 concluded that the plaintiff's injury was neither
7 concrete nor particularized. Furthermore, it reasoned,
8 "the alleged cause of the decreased value (excessive
9 foreclosures) is of a type which would not necessarily
10 have a long term impact on home prices. This strongly
11 suggests that the injury is conjectural and speculative,
12 and not actual or imminent." Id., citing Lujan, 504 U.S.
13 at 560-61.

14
15 Here, Plaintiff has not sold his house at a loss or
16 suffered any actual loss arising from the harms he
17 alleges in the FAC. (See FAC ¶¶ 36, 37.) Thus, like the
18 plaintiffs in Kaing, Tingley, and Green, Plaintiff has
19 not "realized [a] decrease in value." Kaing, 2010 WL
20 625365, at *5; Tingley, 2008 WL 1902108, at *5 n.3;
21 Green, 2007 WL 2688612, at *3. Furthermore, the injury
22 is speculative, rather than actual or imminent, because
23 economic conditions affecting the value of Plaintiff's
24 house is subject to change with broader economic
25 conditions. Green, 2007 WL 2688612, at *3; Tingley, 2008
26 WL 1902108, at *4 ("it is just as plausible that a
27 positive change in the unemployment rate, the housing
28

1 market, the mortgage interest rates or other economic
2 factors could cause an increase in [Plaintiff's] property
3 value." (emphasis added). Thus, the alleged decline in
4 value that Plaintiff claims to have suffered may vanish
5 before Plaintiff suffers a concrete injury. See Kaing,
6 2010 WL 625365, citing Lujan, 504 U.S. at 560-61.

7
8 To bolster his claim and distinguish the facts here
9 from Tingley and Green, Plaintiff alleges he suffered
10 additional injuries: "[U]nstable neighborhoods, multiple
11 families living in one home, transient neighbors with no
12 long-term ties to the neighborhood, unfinished and
13 unkempt yards, and in some cases, increased crime." (See
14 Stephens Opp'n at 13.) This attempt fails, however,
15 because Plaintiff's FAC contains nothing more than
16 speculation to link these harms to Defendants' conduct or
17 omissions. See Kaing, 2010 WL 625365, at *5-6 (holding
18 that plaintiffs claiming similar injuries failed to
19 allege a cognizable injury in fact). See Section
20 III(A)2, below.

21
22 Plaintiff also attempts to distinguish this case from
23 Tingley and Green by arguing that the plaintiffs in those
24 cases did not allege a failure to disclose or that the
25 prices of their houses were "artificially inflated" as a
26 result of the defendant homebuilders' conduct. (Stephens
27
28

1 Opp'n at 13.) The existence of an additional allegation
2 of harm, however, does not salvage the FAC.

3
4 Moreover, Plaintiff fails to distinguish his case
5 from Kaing, in which the plaintiff claimed failure to
6 disclose and also alleged she was overcharged. 2010 WL
7 625365, at *2. Plaintiff fails to persuade the Court
8 that these factors are sufficient to transform his
9 speculative harms into a cognizable injury in fact.

10
11 Plaintiff relies on Friends of the Earth, Inc. v.
12 Laidlaw Env't Servs. (TOC), Inc., 528 U.S. 167 (2000), to
13 argue he has pled a cognizable injury in fact. (Stephens
14 Opp'n at 9-10.) There, the Supreme Court considered the
15 ability to sue for environmental harm, and held that a
16 citizen adequately pled an injury in fact by alleging the
17 defendant's pollution interfered with recreational
18 opportunities. 528 U.S. at 183. Plaintiff points to
19 language in the opinion referring to an alleged
20 diminution in the value of the litigants' property. Id.
21 at 182-83. A diminution in value that is tied to a
22 physical change in the neighborhood's environment, such
23 as pollution in the case of Friends of the Earth, is
24 better characterized as concrete and particularized, and
25 actual or imminent, than a purely economic change in a
26 neighborhood. Lujan, 504 U.S. at 560-61.

1 When faced with similar facts, the district court in
2 Kaing found the plaintiff had failed to plead actual
3 injury. 2010 WL 625365, at *5 ("Compared to the
4 diminution in value that is tied to a physical change to
5 the neighborhood's environment, such as pollution . . . a
6 decline in value that is tied to a purely economic change
7 to a neighborhood is much more difficult to characterize
8 as concrete and particularized, and actual or
9 imminent."). The Kaing court noted a key difference
10 between environmental harm tied to physical damage and
11 economic harm: "[A diminution in value arising from
12 economic harm] can potentially evaporate before Plaintiff
13 has suffered a concrete injury, even in the absence of
14 redress from the courts." Id. While environmental
15 damage caused by pollution does not redress itself, the
16 complex economic factors that affected the value of
17 Plaintiff's residence can improve. See Tingley, 2008 WL
18 1902108, at *4 n.3.

19
20 The capacity for Plaintiff's alleged injury to
21 fluctuate with changes in the economy, "strongly
22 suggests" that Plaintiff's alleged injury is "conjectural
23 and speculative, not actual or imminent." Green, 2007 WL
24 2688612, at *3; see Sanner v. Bd. of Trade of City of
25 Chicago, 62 F.3d 918, 924 (7th Cir. 1995) (finding
26 soybean farmers who refrained from selling their crops
27 due to a depressed market price lacked standing to sue
28

1 under Article III, while those who sold at the depressed
2 price enjoyed standing because "[t]he fact of a sale at
3 an allegedly depressed price establishes discernable
4 injury in a manner in which a failure to sell cannot."),
5 citing Blue Chip Stamps v. Manor Drug Stores, 421 U.S.
6 723, 743 (1975).

7
8 Plaintiff next argues he has suffered an injury in
9 fact because California law permits real estate buyers to
10 sue for rescission and damages when a seller fails to
11 disclose material facts. (Stephens Opp'n at 10-11); see
12 Reed v. King, 145 Cal. App. 2d 261 (1983). This argument
13 fails, however, because it merely states the remedies
14 available to plaintiffs in failure to disclose cases, but
15 does not establish an injury.

16
17 Furthermore, the facts in the cases Plaintiff cites
18 are distinguishable from the context of this case; the
19 failure to disclose in the former cases recognized a duty
20 to disclose (1) physical defects and legal impediments to
21 use of real property, (Karoutas v. HomeFed Bank, 232 Cal.
22 App. 3d 767, 771 (1991) (finding a duty to disclose where
23 plaintiff's residence had substantial and permanent soil
24 movement that required costly repairs); SanFran Co. v.
25 Rees Blow Pipe Mfg. Co., 168 Cal. App. 2d 191, 205
26 (finding a duty to disclose where a property was missing
27 walls and subject to various building code violations);
28

1 Graf v. Sumpter, 207 Cal. App. 2d 391, 392-93 (finding a
2 duty to disclose where the land upon which plaintiffs'
3 residence was built was not properly compacted, causing
4 cracking and crumbling of the residence); or (2) in cases
5 of extreme stigma, (Reed v. King, 145 Cal. App. 3d 261,
6 267 (1983) (finding a duty to disclose where residence
7 was site of gruesome multiple murders committed on the
8 property, but noting that such circumstances were "highly
9 unusual"))).

11 **2. Overpayment Theory**

12 Finally, as to Plaintiff's overpayment theory, the
13 Court construes these allegations as an attempt to
14 describe Defendants' motives for issuing subprime loans.
15 To the extent, however, that Plaintiff alleges he
16 overpaid as a result of Defendants' efforts to inflate
17 housing demand artificially by offering subprime loans,
18 the Court finds the alleged injury is too speculative to
19 constitute an injury in fact because it is not "concrete
20 or verifiable." See Kaing, 2010 WL 625365, at *3, n.2.
21 Plaintiff alleges that Defendants "market[ed] materials
22 that depicted the community as a stable, family[-]based
23 neighborhood" (FAC ¶¶ 35, 36) and "provided . . . false
24 and misleading standardized representations and
25 advertisements regarding the value of the house sold[,]
26 [t]he sales practice of selling to investors[,] and the
27 desirability of the neighborhood where the house was
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1 sold" (FAC ¶ 73). Plaintiff also alleges that Defendants
2 offered subprime loans to "artificially increase[]
3 demand" and thereby increase prices for houses in
4 Plaintiff's neighborhood. (FAC ¶¶ 20, 30, 32, 35, 47,
5 65.) As with Plaintiff's reduced-value theory, the
6 capacity for Plaintiff's alleged injury to fluctuate with
7 changes in the economy, "strongly suggests" that
8 Plaintiff's injury is "conjectural and speculative, not
9 actual or imminent." Green, 2007 WL 2688612, at *3.

10
11 Thus, the Court finds that Plaintiff has failed to
12 articulate an injury in fact that is "concrete and
13 particularized, and actual or imminent." Cf. Lujan, 504
14 U.S. at 560-61.

15
16 **B. Causation**

17 Plaintiff "faces a similarly insurmountable problem
18 with respect to the causation element of standing."
19 Kaing, 2010 WL 625365, at *6. Plaintiff alleges he
20 overpaid for his house and suffered a reduction in the
21 value of his property caused by Defendants' wrongful acts
22 and omissions. Plaintiff's injury must be "fairly
23 traceable to the challenged action of the defendant, and
24 not the result of the independent action of some third
25 party not before the court." Lujan, 504 U.S. at 560.
26 "The line of causation between the [alleged] illegal
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28

1 conduct and injury" must not be "too attenuated." Allen
2 v. Wright, 468 U.S. 737, 752 (1984).

3
4 **1. Reduced-Value Theory**

5 Plaintiff's reduced-value injury is not "fairly
6 traceable" to the challenged action of Defendants.

7 First, any loss in value Plaintiff has suffered has
8 resulted not just from the actions of Defendants, but
9 also from the independent actions of others, e.g.

10 homeowners in Plaintiff's neighborhood who defaulted on
11 their mortgages and third-party mortgage companies that
12 foreclosed on houses in Plaintiff's neighborhood.

13 Plaintiff's theory is premised upon a chain of causation
14 that is affected by general economic factors. These
15 general factors can have unpredictable effects, such as
16 collapse of financial institutions, changes in the credit
17 market, and rising unemployment, which by themselves or
18 in combination affect the housing market. In other
19 words, any injuries suffered by Plaintiff necessarily
20 depend upon a causal chain that includes numerous
21 independent forces and individual decisions of "some
22 third part[ies] not before the court." Lujan, 504 U.S.
23 at 560-61.

24
25 Plaintiff alleges that Defendants (1) marketed the
26 house and neighborhood as stable and desirable (FAC ¶¶
27 19, 25, 28, 35, 84); (2) sold houses to "unqualified and
28

1 high-foreclosure-risk buyers" and assisted them in
2 purchasing or financing their houses (FAC ¶¶ 20-21); (3)
3 sold houses to "investors that were not owner[-]
4 occupiers of the houses," (FAC ¶ 25); and (4) did not
5 disclose this information to Plaintiff (FAC ¶ 28-39, 35-
6 36, 44). Plaintiff concludes that as a result of
7 Defendants' conduct, the "neighborhoods [sic] where
8 Plaintiff lives have had a number of foreclosures," which
9 "have resulted in substantial loss of value to the
10 surrounding homes." (FAC ¶ 47.)
11

12 As Defendants point out, an examination of the causal
13 chain reveals the speculative nature of Plaintiff's
14 injuries. (See Lennar Mot. at 9.) Plaintiff alleges
15 that Defendants sold houses in Plaintiff's neighborhood
16 to "unqualified" buyers. Plaintiff defines as
17 "unqualified" those buyers who purchased their houses
18 with less than a 20% down payment. Later, some of these
19 unqualified buyers defaulted on their mortgage loans.
20 Eventually, third-party mortgage companies foreclosed on
21 those houses; Defendants did not initiate these
22 foreclosure proceedings. The loss of houses due to
23 foreclosure -- along with other factors -- eventually
24 contributed to a decrease in the value of Plaintiff's
25 house. (See Stephens Opp'n at 9.) When examining the
26 chain of events Plaintiff alleges, it is apparent that
27 the Plaintiff's alleged injuries necessarily depend upon
28

1 a causal chain that includes numerous independent forces
2 and individual decisions of "some third part[ies] not
3 before the court." Lujan, 504 U.S. at 560-61.

4
5 Other courts have reached the same conclusion when
6 faced with nearly identical allegations. See Kaing, 2010
7 WL 625365, at *6; Tingley, 2008 WL 1902108, at *4; Green,
8 2007 WL 2688612, at *3. As the Kaing and Tingley courts
9 noted, a causal chain cannot be found or even inferred
10 from such allegations because each link in the chain may
11 be caused by factors other than Defendants' conduct.
12 Kaing, 2010 WL 625365, at *6; Tingley, 2008 WL 1902108,
13 at *4. For example, the other owners may have defaulted
14 on their mortgages as a result of "other factors, such as
15 unemployment, health problems, a general weakening of the
16 economy, or other financial conditions." Tingley, 2008
17 WL 1902108, at *4. Furthermore, there are "intervening
18 decisions by the mortgage assignees to foreclose the
19 defaulted mortgages rather than to restructure the loans,
20 which may have been done for reasons totally apart from
21 the alleged fraud." Id.

22
23 The allegations that the depreciation of Plaintiff's
24 property was caused by the foreclosures in his
25 neighborhood, "rather than as a result of a myriad of
26 other factors, such as rising unemployment in the region,
27 changes in the housing market, or other economic
28

1 conditions," falls short of the standard required to
2 plead causation. Kaing, 2010 WL 625365, at *6. Although
3 foreclosures can have an adverse impact on property
4 values, supply and demand are affected simultaneously by
5 a number of market factors. See Tingley, 2008 WL
6 1902108, at *4. Any combination of these factors may
7 have caused a reduction in Plaintiff's property value.
8 See id. Even assuming that the value of Plaintiff's
9 property was affected adversely by foreclosures in his
10 neighborhood, the connection "remains too tenuous to
11 provide standing." Id.

12
13 The additional injuries Plaintiff alleges in the FAC
14 -- "unstable neighborhoods, multiple families living in
15 one home, transient neighbors with no long-term ties to
16 the neighborhood, unfinished and unkempt yards, and in
17 some cases, increased crime" -- are not "fairly
18 traceable" to the challenged action of Defendants.
19 Viewing the allegations in FAC in the light most
20 favorable to Plaintiff, Plaintiff fails to plead facts
21 sufficient "to raise a right to relief above the
22 speculative level." Bell Atlantic, 550 U.S. at 555. The
23 FAC contains nothing more than speculation to link these
24 harms to Defendants' conduct or omissions. See Kaing,
25 2010 WL 625365, at *5-6 (holding that plaintiffs claiming
26 similar injuries failed to allege causation sufficient to
27 survive a motion to dismiss).

28

1 The fragility of the connection between Defendants'
2 alleged conduct and the decreased value of Plaintiff's
3 house is illuminated "with each additional link in the
4 chain where the choices of others have an impact and make
5 other scenarios at least as plausible as the one advanced
6 by . . . Plaintiff[]." Id. Put into concrete terms,
7 because Plaintiff still owns his property, a positive
8 change in the unemployment rate, housing market, mortgage
9 interest rates, or other economic factors could cause
10 Plaintiff's property value to increase, thus decreasing
11 or obviating his alleged losses. Again, other courts
12 reached the same conclusion. Tingley, 2008 WL 1902108,
13 at *4; Green, 2007 WL 2688612, at *3.

14
15 **2. Overpayment Theory**

16 Turning to Plaintiff's overpayment theory, the Court
17 construes these allegations as an attempt to describe
18 Defendants' motives for issuing subprime loans. To the
19 extent, however, that Plaintiff alleges he overpaid for
20 his house as a result of Defendants' efforts to inflate
21 housing demand artificially by offering subprime loans,
22 the causal connection between the alleged overpayment and
23 Defendants' "scheme" depends upon numerous independent
24 factors and third parties not before the court. See
25 Kainq, 2010 WL 625365, at *6.

1 The third parties include, for example, the alleged
2 "unqualified" and "investment" buyers to whom Plaintiff
3 also indirectly assigns blame for the decrease in his
4 property value. These third parties acted independently,
5 e.g., to default on loan payments, to choose their
6 tenants, or to maintain their properties, which in turn
7 directly affect losses Plaintiff allegedly suffered, thus
8 making it impossible to trace those losses to Defendants'
9 alleged misconduct.

10
11 Similarly, the "housing bubble," or inflation of
12 housing prices, was a nationwide phenomenon, traceable to
13 variables independent of Defendants' alleged scheme, such
14 as lax regulatory enforcement, rates of unemployment,
15 credit market developments, and general economic growth.
16 As with Plaintiff's reduced-value theory, it cannot be
17 said that the inflated purchase price Plaintiff allegedly
18 paid are fairly traceable to Defendants' alleged
19 "scheme."

20
21 Thus, taking Plaintiff's allegations as true, as the
22 Court must for these purposes, Plaintiff's harm is not
23 "fairly traceable" to Defendants' alleged conduct.
24 Plaintiff, therefore, does not have standing to sue for
25 paying an "inflated" purchase price for his house or for
26 a subsequent reduction in value of his house. Hence, the
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Court lacks subject matter jurisdiction over this action and accordingly DISMISSES the FAC,³ with prejudice.

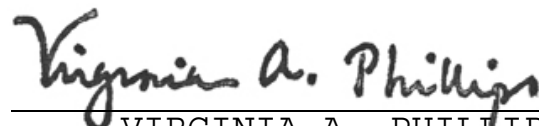
IV. CONCLUSION

For the foregoing reasons, the Court GRANTS Defendants' Motion to Dismiss. As the Court finds that Plaintiff would be unable to amend his pleadings to correct the deficiencies related to constitutional standing, it dismisses the First Amended Complaint with prejudice.

The Court DENIES Defendants' Motion to Strike as moot.

IT IS SO ORDERED.

Dated: March 31, 2010



VIRGINIA A. PHILLIPS
United States District Judge

³ As the Court finds Plaintiff lacks standing to assert his claims, it does not have jurisdiction over this matter. The Court, accordingly, does not reach Plaintiff's and Defendants' arguments regarding Rule 9 and 12(b)(6) as to each claim.