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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

REMEDIOS MARTINEZ, as an )  
individual and on behalf )  
of all others similarly )  
situated, )  
Plaintiff, )  
v. )  
D.R. HORTON, INC.; DHI )  
MORTGAGE COMPANY GP, )  
INC.; and DOES 1 through )  
10, inclusive, )  
Defendants. )

Case No. EDCV 09-1672-VAP  
(DTBx)  
**[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 I. BACKGROUND

2 A. Plaintiff's Allegations

3 Plaintiff Remedios Martinez ("Plaintiff") alleges she  
4 purchased a new residence in November 2005 in Riverside  
5 County, California from D.R. Horton, Inc., made a down  
6 payment of about 25% of the total purchase price,  
7 financed the balance of the purchase through DHI Mortgage  
8 Company GP, Inc. ("DHI Mortgage"), and still lives in the  
9 residence. (First Amended Complaint ("FAC") ¶ 34.)

10  
11 Plaintiff brings this putative class action on behalf  
12 of herself and a national class including "[a]ll D.R.  
13 Horton customers who purchased a new D.R. Horton house  
14 from January 1, 2004, through December 31, 2006, and put  
15 20% or more down toward the purchase of the house[,] or  
16 alternatively, "a class of new D.R Horton customers whose  
17 homes are located in California." (FAC ¶¶ 47-48.)

18  
19 Plaintiff alleges "on information and belief" that  
20 before 2004, Defendants D.R. Horton, Inc. ("D.R.  
21 Horton"), and DHI Mortgage (collectively, "Defendants" or  
22 "D.R. Horton Defendants") implemented a "scheme" to  
23 increase the number of houses sold in Plaintiff's  
24 neighborhood and the amount of profit per sale. (FAC ¶  
25 17.) The "scheme" was intended to "convince government  
26 entities, then the community, and finally buyers that  
27 Defendants were building a traditional neighborhood with  
28

1 stable owners who occupied their homes and who were  
2 vested in the community and the neighborhood." (FAC ¶  
3 18.) "Implicit in this marketing scheme was that  
4 Defendants were making a good-faith effort to sell homes  
5 to buyers who [Defendants] expected could afford to buy  
6 the houses and would be stable neighbors." (Id.)

7  
8 Plaintiff alleges she was provided "marketing  
9 materials that depicted the community as a stable,  
10 family[-]based neighborhood." (FAC ¶ 34.) Plaintiff  
11 also alleges "on information and belief" that  
12 Defendants represented that Defendants do not sell homes  
13 to investors and discourages speculation. (FAC ¶ 37.)

14  
15 Plaintiff alleges Defendants engaged in a scheme to  
16 market the houses to, and provide financing for,  
17 "unqualified buyers who posed an abnormally high risk of  
18 foreclosure . . . to increase both the number of sales  
19 and the prices of the houses in same neighborhoods in  
20 which Defendants were selling to traditionally qualified  
21 and low-foreclosure- risk buyers." (FAC ¶ 19.)  
22 Plaintiff generally alleges that Defendants assisted and  
23 encouraged the "unqualified" buyers to appear qualified.  
24 (FAC ¶ 22.)

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1 Plaintiff asserts that Defendants "concealed and  
2 intentionally failed to disclose to prospective buyers .  
3 . . . that numerous houses in the neighborhoods were being  
4 purchased by unqualified and high-foreclosure-risk  
5 buyers, despite Defendants' knowledge that this could,  
6 and likely would over time, have a material negative  
7 effect on the value and desirability of the house and the  
8 neighborhood." (FAC ¶ 28.) Plaintiff alleges Defendants  
9 also failed to disclose that "they had sold houses, and  
10 planned to sell houses in the future, to investors who  
11 would not occupy the houses." (FAC ¶ 43.)  
12

13 Plaintiff alleges two theories of harm stemming from  
14 Defendants' conduct. First, Plaintiff alleges she "paid  
15 inflated prices for [her] house[]" as a result of  
16 Defendants' failure to disclose that "Defendants had sold  
17 houses . . . to unqualified and high-foreclosure-risk  
18 buyers. . . [and] to investors who would not occupy the  
19 houses." (FAC ¶¶ 43, 46.) Secondly, Plaintiff alleges  
20 she suffered an injury years after purchasing her house  
21 when the real estate market declined and the  
22 "unqualified" buyers defaulted on their loans and lost  
23 their houses in foreclosure proceedings, which led to a  
24 decline in the value of Plaintiff's residence. (FAC ¶  
25 46.)  
26  
27  
28

1 **B. Procedural History**

2 On September 3, 2009, Plaintiff filed a putative  
3 class action against Defendants. The same day,  
4 Plaintiff's counsel filed seven other similar class  
5 actions<sup>1</sup> ("Homebuilder Actions") alleging that the  
6 homebuilder defendants and their mortgage lending  
7 affiliates engaged in conduct that "artificially  
8 inflated" the purchases prices of plaintiffs' residences  
9 and eventually reduced their value.

10  
11 On October 23, 2009, the Defendants joined in a  
12 "Motion to Consolidate," which sought to consolidate the  
13 eight Homebuilder Actions. The Court denied the Motion  
14 to Consolidate. On November 18, 2009, the Homebuilder  
15 Actions were transferred to this Court. On December 21,  
16 2009, Plaintiff filed the FAC, which added allegations

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18  
19 <sup>1</sup> 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 regarding Defendants. The substance of the claims  
2 remains unchanged.

3

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

10

11 On January 22, 2010, Defendant DHI Mortgage filed:  
12 (1) a Motion to Dismiss ("Motion"), and (2) a Motion to  
13 Strike Portions of the First Amended Complaint. In their  
14 Motion to Dismiss, Defendants incorporate by reference  
15 the arguments advanced by defense counsel in Stephens, et  
16 al. v. Lennar Corp, et al., ED09-CV1668-VAP (DTBx) and  
17 Nielson, et al. v. Shea Homes, Inc, et al., ED09-CV1673-  
18 VAP (DTBx). (Mot. at 6 n.3.) On January 22, 2010, D.R.  
19 Horton filed a Motion to Dismiss for Lack of Personal  
20 Jurisdiction. On February 22, 2010, Plaintiff filed  
21 Opposition<sup>2</sup> to both Motions. On March 4, 2010, Defendant

22

23 <sup>2</sup> Counsel for the plaintiffs in the eight Homebuilder  
24 Actions divides the subject matter of the oppositions to  
Homebuilder Defendants' Motions as follows:

- 25 • Stephens, et al. v. Lennar Corp, et al., ED09-CV1668-  
VAP (DTBx): Plaintiffs' Opposition addresses  
constitutional standing ("Stephens Opp'n").
- 26 • Oneto v. The Ryland Group, Inc., et al., ED09-CV1670-  
VAP (DBTx): Plaintiffs' Opposition addresses  
27 Plaintiffs' UCL claims and claims for breach of the  
implied covenant of good faith and fair dealing

28

(continued...)

1 DHI Mortgage filed a Reply for both Motions. On March  
2 18, 2010, the parties stipulated for an order granting  
3 D.R. Horton's request to withdraw the Motion to Dismiss  
4 for Lack of Personal Jurisdiction and join the DHI  
5 Mortgage's Motion to Dismiss. The Court issued an Order  
6 on March 21, 2010 stating that D.R. Horton shall be  
7 deemed a moving party to DHI Mortgage's Motion to  
8 Dismiss.

9  
10 Defendants argue the FAC should be dismissed for the  
11 following reasons: (1) Plaintiff lacks constitutional  
12 standing to bring this action; (2) Plaintiff fails to  
13 allege her fraud-based claims with particularity as  
14 required by Rule 9(b); (3) Plaintiff fails to state a  
15 claim as to each cause of action under 12(b)(6). (Mot.  
16 at 1.)

17  
18 **II. LEGAL STANDARD FOR MOTION TO DISMISS UNDER**  
19 **RULE 12(b)(6)**

20 Rule 12(b)(6) allows a party to bring a motion to  
21 dismiss for failure to state a claim upon which relief  
22 can be granted. As a general matter, the Federal Rules  
23 require only that a plaintiff provide "a short and plain  
24

25 \_\_\_\_\_  
26 <sup>2</sup>(...continued)  
27 ("Oneto Opp'n").

- 28 • Nielson, et al. v. Shea Homes, Inc, et al., ED09-CV1673-VAP (DTBx): Plaintiffs' Opposition addresses Rule 9 ("Nielson Opp'n").

1 statement of the claim' that will give the defendant fair  
2 notice of what the plaintiff's claim is and the grounds  
3 upon which it rests." Conley v. Gibson, 355 U.S. 41, 47  
4 (1957) (quoting Fed. R. Civ. P. 8(a)(2)); Bell Atlantic  
5 Corp. v. Twombly, 550 U.S. 544, 555 (2007). In addition,  
6 the Court must accept all material allegations in the  
7 complaint -- as well as any reasonable inferences to be  
8 drawn from them -- as true. See Doe v. United States,  
9 419 F.3d 1058, 1062 (9th Cir. 2005); ARC Ecology v. U.S.  
10 Dep't of Air Force, 411 F.3d 1092, 1096 (9th Cir. 2005).

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

21  
22 In other words, the allegations must be plausible on  
23 the face of the complaint. See Ashcroft v. Iqbal, 556  
24 U.S. \_\_\_, 129 S. Ct. 1937, 1949 (2009). "The  
25 plausibility standard is not akin to a 'probability  
26 requirement,' but it asks for more than a sheer  
27 possibility that a defendant has acted unlawfully. Where  
28

1 a complaint pleads facts that are 'merely consistent  
2 with' a defendant's liability, it stops short of the line  
3 between possibility and plausibility of 'entitlement to  
4 relief.'" Id. (citations and internal quotations  
5 omitted).

6  
7 Although the scope of review is limited to the  
8 contents of the complaint, the Court may also consider  
9 exhibits submitted with the complaint, Hal Roach Studios,  
10 Inc. v. Richard Feiner & Co., 896 F.2d 1542, 1555 n.19  
11 (9th Cir. 1990), and "take judicial notice of matters of  
12 public record outside the pleadings," Mir v. Little Co.  
13 of Mary Hosp., 844 F.2d 646, 649 (9th Cir. 1988).

14  
15 "Failure to properly allege standing is a ground for  
16 dismissal under Rule 12(b)(6)." MAI Sys. Corp. v. UIPS,  
17 856 F. Supp. 538, 539 (N.D. Cal. 1994), citing W. Mining  
18 Council v. Watt, 643 F.2d 618 (9th Cir. 1980).

### 20 III. DISCUSSION

21 Article III of the Constitution gives federal courts  
22 jurisdiction over "cases and controversies." U.S. Const.  
23 Art. III, § 2, cl. 2. "In essence the question of  
24 standing is whether the litigant is entitled to have the  
25 court decide the merits of the dispute or of particular  
26 issues." Warth v. Seldin, 422 U.S. 490, 498 (1975).  
27 Standing, therefore, is a threshold issue in every  
28

1 federal case. Elk Grove Unified Sch. Dist. v. Newdow,  
2 524 U.S. 1, 11 (2004) ("In every federal case, the party  
3 bringing the suit must establish standing to prosecute  
4 the action."); Warth, 422 U.S. at 517-18; McMichael v.  
5 County of Napa, 709 F.2d 1268, 1269 (9th Cir. 1983)  
6 ("Before the judicial process may be invoked, a plaintiff  
7 must 'show that the facts alleged present the court with  
8 a 'case or controversy' in the constitutional sense and  
9 that [he] is a proper plaintiff to raise the issues  
10 sought to be litigated.'"), citing Linda R.S. v. Richard  
11 D., 410 U.S. 614, 616 (1973).  
12

13 To satisfy the "case or controversy" requirement, a  
14 plaintiff "must demonstrate that he has suffered an  
15 'injury in fact'" that a favorable judgment will redress.  
16 Whitmore v. Arkansas, 495 U.S. 149, 155 (1990); Newdow,  
17 542 U.S. at 12, citing Lujan v. Defenders of Wildlife,  
18 504 U.S. 555, 560-561 (1992). In other words, a  
19 plaintiff must demonstrate: (1) he has suffered an  
20 "'injury in fact' -- an invasion of a legally protected  
21 interest which is (a) concrete and particularized, and  
22 (b) actual or imminent, not conjectural or hypothetical";  
23 (2) there is a causal connection between the injury and  
24 the conduct complained of -- that is, the injury is  
25 "fairly traceable" to the challenged action of the  
26 defendant, and not the result of the independent action  
27 of some third party not before the court; and (3) it is  
28

1 "likely," as opposed to merely "speculative," that the  
2 injury will be redressed by a favorable judicial  
3 decision. Lujan, 504 U.S. at 560-61 (footnote,  
4 citations, and quotation marks omitted).

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

24  
25 Plaintiff must satisfy Article III standing  
26 requirements to assert each of her claims in federal  
27 court. As Plaintiff's claims all are founded upon the  
28

1 same alleged injuries, the Court's analysis applies to  
2 each of them. Plaintiff fails to establish standing  
3 because she has not pled an injury in fact and has not  
4 shown how her alleged injuries are "fairly traceable" to  
5 Defendants' alleged actions.

6  
7 **A. Injury in Fact**

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

23  
24 As noted above, Plaintiff alleges she was injured by  
25 (1) paying a "inflated" purchase price for her house as a  
26 result of the "buying frenzy" created because Defendants  
27 sold houses to "unqualified" buyers ("overpayment  
28

1 theory") (FAC ¶¶ 19, 33), and (2) a reduction in the  
2 value of her property caused by Defendants' wrongful acts  
3 and omissions ("reduced-value theory") (FAC ¶¶ 30, 46).  
4 These alleged harms fall short of a concrete, particular,  
5 and actual injury.

6  
7 **1. Reduced-Value Theory**

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

17  
18 Moreover, the cause of any such loss cannot be  
19 determined until that time as well. In other words,  
20 Plaintiff has alleged only harm which, rather than being  
21 specific and concrete, is general and tied so closely to  
22 pervasive economic conditions and harms, that it does not  
23 suffice as an allegation of direct injury. See First  
24 Nationwide Bank v. Gelt Funding Corp., 27 F.3d 763, 770  
25 (2d Cir. 1994) (recognizing that a number of variables  
26 can affect real estate values).

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

13  
14 In Kaing, the district court found that a plaintiff  
15 in a putative class action against defendant homebuilders  
16 lacked standing to assert a theory "that she ha[d] been  
17 injured because [the homebuilders'] lending practices  
18 caused widespread foreclosures in her neighborhood,  
19 [which had] driven down the value of her house." 2010 WL  
20 625365, at \*5. There, the plaintiff alleged that the  
21 defendants "marketed the neighborhoods as stable and  
22 desirable neighborhoods, while becoming even more  
23 aggressive in selling homes to unqualified and high-  
24 foreclosure-risk buyers . . . ." Id. at \*2. The  
25 plaintiff alleged that high foreclosure rates in her  
26 neighborhood decreased the value of her house by over  
27 50%. Id.

28

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 her house at a loss or  
16 suffered any actual loss arising from the harms she  
17 alleges in the FAC. (See FAC ¶¶ 24.) 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 her claim and distinguish the facts here  
9 from Tingley and Green, Plaintiff alleges she 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 her 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 her  
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 she has pled a cognizable injury in fact.

14 (Stephens Opp'n at 9-10.) There, the Supreme Court  
15 considered the ability to sue for environmental harm, and  
16 held that a citizen adequately pled an injury in fact by  
17 alleging the defendant's pollution interfered with  
18 recreational opportunities. 528 U.S. at 183. Plaintiff  
19 points to language in the opinion referring to an  
20 alleged diminution in the value of the litigants'  
21 property. Id. at 182-83. A diminution in value that is  
22 tied to a physical change in the neighborhood's  
23 environment, such as pollution in the case of Friends of  
24 the Earth, is better characterized as concrete and  
25 particularized, and actual or imminent, than a purely  
26 economic change in a neighborhood. Lujan, 504 U.S. at  
27 560-61.

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 she 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"))).

10  
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 she  
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 ¶¶ 34) and "provided . . . false and  
24 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  
28

1 sold" (FAC ¶ 71). 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 ¶¶ 21, 29, 33.) As with  
5 Plaintiff's reduced-value theory, the capacity for  
6 Plaintiff's alleged injury to fluctuate with changes in  
7 the economy, "strongly suggests" that Plaintiff's injury  
8 is "conjectural and speculative, not actual or imminent."  
9 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 she  
20 overpaid for her house and suffered a reduction in the  
21 value of her 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  
27  
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 27, 34, 83); (2) sold houses to "unqualified and high-

1 foreclosure-risk buyers" and assisted them in purchasing  
2 or financing their houses (FAC ¶¶ 19-20); (3) sold houses  
3 to "investors that were not owner[-]occupiers of the  
4 houses," (FAC ¶¶ 42, 44); and (4) did not disclose this  
5 information to Plaintiff (FAC ¶ 28, 31, 34, 43).

6 Plaintiff concludes that as a result of Defendants'  
7 conduct, the "neighborhood[] where Plaintiff lives ha[s]  
8 had a number of foreclosures," which "have resulted in  
9 substantial loss of value to the surrounding homes."

10 (FAC ¶ 46.)  
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 her  
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 her  
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 her 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 her 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 she overpaid for  
20 her 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 her  
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 her house or for  
26 a subsequent reduction in value of her house. Hence, the  
27  
28

1 Court lacks subject matter jurisdiction over this action  
2 and accordingly DISMISSES the FAC,<sup>3</sup> with prejudice.

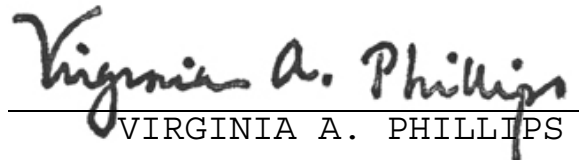
3  
4 **IV. CONCLUSION**

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

11  
12 The Court DENIES Defendants' Motion to Strike as  
13 moot.

14  
15 **IT IS SO ORDERED.**

16  
17  
18  
19 Dated: March 31, 2010

  
VIRGINIA A. PHILLIPS

United States District Judge

20  
21  
22  
23  
24  
25  
26 <sup>3</sup> As the Court finds Plaintiff lacks standing to  
27 assert her claims, it does not have jurisdiction over  
28 this matter. The Court, accordingly, does not reach  
Plaintiff's and Defendants' arguments regarding Rule 9  
and 12(b)(6) as to each claim.