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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

SYLVESTER MAYA, OFER)
MASACHI, AS INDIVIDUALS)
AND ON BEHALF OF ALL)
OTHERS SIMILARLY)
SITUATED,)
)
Plaintiffs,)
)
v.)
)
CENTEX CORPORATION;)
CENTEX HOMES; CTX)
MORTGAGE COMPANY; AND)
DOES 1 THROUGH 10,)
INCLUSIVE,)
)
Defendants)
_____)

Case No. EDCV 09-01671
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.

I. BACKGROUND

A. Plaintiffs' Allegations

Plaintiff Sylvester Maya ("Maya") alleges he purchased a new residence in November 2005 in San Bernardino County, California from Defendant Centex Homes, made a down payment of about 20% of the total purchase price, and still owns and occupies the residence. (First Amended Complaint ("FAC") ¶ 37.)

Plaintiff Ofer Masachi ("Masachi") alleges he purchased a new residence in November 2005 in San Bernardino County, California from Defendant Centex Homes, made a down payment of 25% of the total purchase price, financed the balance through CTX Mortgage, and still owns and occupies the residence (FAC ¶ 38.)

Plaintiffs Maya and Masachi (collectively, "Plaintiffs") bring this putative class action on behalf of themselves and a national class including "[a]ll Centex Homes customers who purchased a new Centex Homes house from January 1, 2004, through December 31, 2006, and put 20% or more down toward the purchase of the house[,]" or alternatively, "a class of new Centex Homes customers whose homes are located in California." (FAC ¶¶ 51-52.)

1 Plaintiffs allege "on information and belief" that
2 before 2004, Defendants Centex Corporation, Centex Homes,
3 and CTX Mortgage Company (collectively, "Defendants" or
4 "Centex Defendants") implemented a "scheme" to increase
5 the number of houses sold and to increase the amount of
6 profit per sale. (FAC ¶ 20.) The "scheme" was intended
7 to "convince government entities, then the community, and
8 finally buyers that Defendants were building a
9 traditional neighborhood with stable owners who occupied
10 their homes and who were vested in the community and the
11 neighborhood." (FAC ¶ 21.) "Implicit in this marketing
12 scheme was that Defendants were making a good-faith
13 effort to sell homes to buyers who [Defendants] expected
14 could afford to buy the houses and would be stable
15 neighbors." (Id.)

16
17 Plaintiffs allege that they were provided "marketing
18 materials that depicted the community as a stable,
19 family[-]based neighborhood." (FAC ¶¶ 37, 38.)
20 Plaintiffs also allege "on information and belief" that
21 Defendants represented that Defendants did not sell
22 houses in their neighborhoods to investors who would not
23 occupy the houses. (FAC ¶¶ 27, 30, 41, 46, 47, 55, 75.)

24
25 Plaintiffs allege Defendants engaged in a scheme to
26 market the houses to, and provide financing for,
27 "unqualified buyers who posed an abnormally high risk of
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1 foreclosure . . . to increase both the number of sales
2 and the prices of the houses in same neighborhoods in
3 which Defendants were selling to traditionally qualified
4 and low-foreclosure- risk buyers." (FAC ¶ 22.)
5 Plaintiffs generally allege that Defendants assisted and
6 encouraged the "unqualified" buyers to appear qualified.
7 (FAC ¶ 25.)

8
9 Plaintiffs assert that Defendants "concealed and
10 intentionally failed to disclose to prospective buyers .
11 . . that numerous houses in the neighborhoods were being
12 purchased by unqualified and high-foreclosure-risk
13 buyers, despite Defendants' knowledge that this could,
14 and likely would over time, have a material negative
15 effect on the value and desirability of the house and the
16 neighborhood." (FAC ¶ 31.)

17
18 Plaintiffs allege two theories of harm stemming from
19 Defendants' conduct. First, Plaintiffs allege they "paid
20 inflated prices for their houses" as a result of
21 Defendants' failure to disclose that "Defendants had sold
22 houses . . . to unqualified and high-foreclosure-risk
23 buyers. . . [and] to investors who would not occupy the
24 houses." (FAC ¶¶ 32, 34, 47, 50.) Secondly, Plaintiffs
25 allege they suffered an injury years after purchasing
26 their houses when the real estate market declined and the
27 "unqualified" buyers defaulted on their loans and lost

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1 their houses in foreclosure proceedings, which led to a
2 decline in the value of Plaintiffs' residences. (FAC ¶¶
3 28, 31, 33, 34, 50.)

4 5 **B. Procedural History**

6 On September 3, 2009, Plaintiffs filed a putative
7 class action against the Centex Defendants. On the same
8 day, Plaintiff's counsel filed seven other similar class
9 actions¹ ("Homebuilder Actions") alleging that the
10 homebuilder defendants and their mortgage lending
11 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 Centex Defendants joined in
16 a "Motion to Consolidate," which sought to consolidate
17 the eight Homebuilder Actions. The Court denied the
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 VAP (DTBx)
24 • Lumalu et al. v. Richmond American Homes Corp., et
25 al., ED09-CV1669-VAP (OPx)
26 • Oneto v. The Ryland Group, Inc., et al., ED09-CV1670-
27 VAP (DBTx)
28 • Maya, et al. v. Centex Corp., et al., ED09-CV1671-VAP
(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-VAP (DTBx)
• Kelly, et al. v. Beazer Homes USA, Inc., et al.,
ED09-CV1674-VAP (DTBx)

1 Motion to Consolidate. On November 18, 2009, the
2 Homebuilder Actions were transferred to this Court. On
3 December 21, 2009, Plaintiffs filed the FAC, which added
4 allegations regarding the Defendants. The substance of
5 the claims remains unchanged. On January 20, 2010,
6 Plaintiffs dismissed all claims against Defendant Centex
7 Homes Corporation.

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

15
16 On January 22, 2010, Defendants filed: (1) a Motion
17 to Dismiss ("Motion"), (2) a Request for Judicial Notice,
18 (3) a Motion to Strike Portions of the First Amended
19 Complaint, and (4) the Declaration of William P. Donovan
20 ("Donvan Decl."). On February 22, 2010, Plaintiffs filed
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1 Opposition² to both Motions. On March 4, 2010,
2 Defendants filed a Reply for both Motions.

3
4 In their Motion to Dismiss, Defendants incorporate by
5 reference the arguments advanced by defense counsel in
6 the other Homebuilder Actions. (Mot. at 4.) Defendants
7 argue the FAC should be dismissed for the following
8 reasons: (1) Plaintiffs lack constitutional standing to
9 bring this action; (2) Plaintiffs lack statutory standing
10 to bring their claims under California's Unfair
11 Competition and False Advertising laws; (3) Plaintiffs
12 fail to allege their fraud-based claims with
13 particularity as required by Rule 9(b); and (4)
14 Plaintiffs fail to state a claim as to each cause of
15 action under 12(b)(6). (Mot. at 1.)

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21 ² Counsel for the plaintiffs in the eight Homebuilder
22 Actions divides the subject matter of the oppositions to
Homebuilder Defendants' Motions as follows:

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

1 In other words, the allegations must be plausible on
2 the face of the complaint. See Ashcroft v. Iqbal, 556
3 U.S. ___, 129 S. Ct. 1937, 1949 (2009). "The
4 plausibility standard is not akin to a 'probability
5 requirement,' but it asks for more than a sheer
6 possibility that a defendant has acted unlawfully. Where
7 a complaint pleads facts that are 'merely consistent
8 with' a defendant's liability, it stops short of the line
9 between possibility and plausibility of 'entitlement to
10 relief.'" Id. (citations and internal quotations
11 omitted).

12
13 Although the scope of review is limited to the
14 contents of the complaint, the Court may also consider
15 exhibits submitted with the complaint, Hal Roach Studios,
16 Inc. v. Richard Feiner & Co., 896 F.2d 1542, 1555 n.19
17 (9th Cir. 1990), and "take judicial notice of matters of
18 public record outside the pleadings," Mir v. Little Co.
19 of Mary Hosp., 844 F.2d 646, 649 (9th Cir. 1988).

20
21 "Failure to properly allege standing is a ground for
22 dismissal under Rule 12(b)(6)." MAI Sys. Corp. v. UIPS,
23 856 F. Supp. 538, 539 (N.D. Cal. 1994), citing W. Mining
24 Council v. Watt, 643 F.2d 618 (9th Cir. 1980).

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III. DISCUSSION

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2 Article III of the Constitution gives federal courts
3 jurisdiction over "cases and controversies." U.S. Const.
4 Art. III, § 2, cl. 2. "In essence the question of
5 standing is whether the litigant is entitled to have the
6 court decide the merits of the dispute or of particular
7 issues." Warth v. Seldin, 422 U.S. 490, 498 (1975).
8 Standing, therefore, is a threshold issue in every
9 federal case. Elk Grove Unified Sch. Dist. v. Newdow,
10 524 U.S. 1, 11 (2004) ("In every federal case, the party
11 bringing the suit must establish standing to prosecute
12 the action."); Warth, 422 U.S. at 517-18; McMichael v.
13 County of Napa, 709 F.2d 1268, 1269 (9th Cir. 1983)
14 ("Before the judicial process may be invoked, a plaintiff
15 must 'show that the facts alleged present the court with
16 a 'case or controversy' in the constitutional sense and
17 that [he] is a proper plaintiff to raise the issues
18 sought to be litigated.'"), citing Linda R.S. v. Richard
19 D., 410 U.S. 614, 616 (1973).

20
21 To satisfy the "case or controversy" requirement, a
22 plaintiff "must demonstrate that he has suffered an
23 'injury in fact'" that a favorable judgment will redress.
24 Whitmore v. Arkansas, 495 U.S. 149, 155 (1990); Newdow,
25 542 U.S. at 12, citing Lujan v. Defenders of Wildlife,
26 504 U.S. 555, 560-561 (1992). In other words, a
27 plaintiff must demonstrate: (1) he has suffered an
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1 "'injury in fact' -- an invasion of a legally protected
2 interest which is (a) concrete and particularized, and
3 (b) actual or imminent, not conjectural or hypothetical";
4 (2) there is a causal connection between the injury and
5 the conduct complained of -- that is, the injury is
6 "fairly traceable" to the challenged action of the
7 defendant, and not the result of the independent action
8 of some third party not before the court; and (3) it is
9 "likely," as opposed to merely "speculative," that the
10 injury will be redressed by a favorable judicial
11 decision. Lujan, 504 U.S. at 560-61 (footnote,
12 citations, and quotation marks omitted).

13
14 The party invoking federal jurisdiction bears the
15 burden of establishing the elements of standing. Lujan,
16 504 U.S. at 561, citing FW/PBS, Inc. v. Dallas, 493 U.S.
17 215, 231 (1990); Warth, 422 U.S. at 508. As the three
18 elements of standing "are not mere pleading requirements
19 but rather an indispensable part of the plaintiff's case,
20 each element must be supported in the same way as any
21 other matter on which the plaintiff bears the burden of
22 proof, i.e., with the manner and degree of evidence
23 required at the successive stages in litigation." Lujan,
24 504 U.S. at 561; Lujan v. Nat'l Wildlife Fed'n, 497 U.S.
25 871, 883-89 (1990); Gladstone Realtors v. Village of
26 Bellwood, 441 U.S. 91, 114-15 & n.31 (1979); Simon v. E.
27 Kentucky Welfare Rights Org., 426 U.S. 26, 45 & n.25

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1 (1917); Warth, 422 U.S. at 527 & n.6). "At the pleading
2 stage, general factual allegations of injury resulting
3 from the defendant's conduct may suffice" Id.,
4 citing Nat'l Wildlife Fed'n, 497 U.S. at 889.

5
6 Plaintiffs must satisfy Article III standing
7 requirements to assert each of their claims in federal
8 court. As Plaintiffs' claims all are founded upon the
9 same alleged injuries, the Court's analysis applies to
10 each of them. Plaintiffs fail to establish standing
11 because they have not pled an injury in fact and have not
12 shown how their alleged injuries are "fairly traceable"
13 to Defendants' alleged actions.

14
15 **A. Injury in Fact**

16 Defendants first focus on whether Plaintiffs have
17 suffered a "concrete and particularized, and actual or
18 imminent" injury necessary to meet the first element of
19 Article III standing. Lujan, 504 U.S. at 560-61. To
20 satisfy the "injury in fact" requirement, "[t]he
21 plaintiff must show that he has sustained or is
22 immediately in danger of sustaining some direct injury as
23 a result of the [defendant's] conduct and the injury or
24 threat of injury must be both real and immediate, not
25 conjectural or hypothetical." City of Los Angeles v.
26 Lyons, 461 U.S. 95, 101-02 (1983) (citations omitted);
27 Lujan, 504 U.S. at 560 ("[By injury in fact we mean] an
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1 invasion of a legally protected interest which is (a)
2 concrete and particularized, . . . and (b) actual or
3 imminent, not 'conjectural' or 'hypothetical'.")
4

5 As noted above, Plaintiffs allege they were injured
6 by (1) paying "inflated" purchase prices for their houses
7 as a result of the "buying frenzy" created because
8 Defendants sold houses to "unqualified" buyers
9 ("overpayment theory") (FAC ¶¶ 22, 36), and (2) suffering
10 a reduction in the value of their properties caused by
11 Defendants' wrongful acts and omissions ("reduced-value
12 theory") (FAC ¶¶ 31, 33). These alleged harms fall short
13 of a concrete, particular, and actual injury.
14

15 **1. Reduced-Value Theory**

16 The Court first considers Plaintiffs' reduced-value
17 theory. Plaintiffs still own their houses, so their
18 assertions of loss are conjectural. Any loss (or gain)
19 -- presumably measured against the initial purchase price
20 -- cannot be ascertained, nor measured, unless and until
21 the owner sells the house. See Phillips v. Frank, 295
22 F.2d 629, 632 (9th Cir. 1961) (recognizing that a gain or
23 loss in real property cases is determined at the time of
24 sale).
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1 Moreover, the cause of any such loss cannot be
2 determined until that time as well. In other words,
3 Plaintiffs have alleged only harm which, rather than
4 being specific and concrete, is general and tied so
5 closely to pervasive economic conditions and harms, that
6 it does not suffice as an allegation of direct injury.
7 See First Nationwide Bank v. Gelt Funding Corp., 27 F.3d
8 763, 770 (2d Cir. 1994) (recognizing that a number of
9 variables can affect real estate values).

10
11 Other courts have reached the same conclusion when
12 faced with nearly identical allegations. See Kaing v.
13 Pulte Homes, Inc., No. 09-5057, 2010 WL 625365, at *5-6
14 (N.D. Cal. Feb. 18, 2010); Tingley v. Beazer Homes Corp.,
15 No. 07-176, 2008 WL 1902108, at *5, n.3 (W.D.N.C. April
16 25, 2008) ("harm is only realized if Plaintiffs sell
17 their home."); Green v. Beazer Homes Corp., No. 07-1098,
18 2007 WL 2688612, at *3 (D.S.C. Sept. 10, 2007)
19 (dismissing the action because "Plaintiff does not . . .
20 suggest that she or any of her other similarly 'injured'
21 neighbors have realized this decrease in value (e.g., as
22 a result of sale of the home).").

23
24 In Kaing, the district court found that a plaintiff
25 in a putative class action against defendant homebuilders
26 lacked standing to assert a theory "that she ha[d] been
27 injured because [the homebuilders'] lending practices
28

1 caused widespread foreclosures in her neighborhood,
2 [which had] driven down the value of her house." 2010 WL
3 625365, at *5. There, the plaintiff alleged that the
4 defendants "marketed the neighborhoods as stable and
5 desirable neighborhoods, while becoming even more
6 aggressive in selling homes to unqualified and high-
7 foreclosure-risk buyers" Id. at *2. The
8 plaintiff alleged that high foreclosure rates in her
9 neighborhood decreased the value of her house by over
10 50%. Id.

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

1 Distinguishing "general economic harms" from the harm
2 in cases where a plaintiff's injury arose from a physical
3 change to the neighborhood's environment, the Kaing court
4 noted, "[A] decline in value that is tied to a purely
5 economic change to a neighborhood is much more difficult
6 to characterize as 'concrete and particularized, and
7 actual or imminent.' Such economic conditions are likely
8 to change with the broader economy, and any decline in
9 housing value can potentially evaporate before Plaintiff
10 has suffered a concrete injury, even in the absence of
11 redress from the courts." Id. at *5, citing Lujan, 504
12 U.S. at 560-61. As the plaintiff had not sold, or even
13 attempted to sell, her house under the changed economic
14 conditions, the court concluded, "[I]t is not clear that
15 the diminished value of her house is cognizable as an
16 'injury in fact.'" Id.

17
18 In reaching its conclusion, the Kaing court relied on
19 two other cases arising under similar circumstances --
20 Tingley and Green. In both cases, the plaintiffs filed
21 putative class actions against defendant homebuilders,
22 claiming the defendants targeted low-income purchasers,
23 which resulted in high rates of foreclosure in
24 plaintiffs' neighborhoods and consequently decreased the
25 value of the plaintiffs' residences. See Tingley, 2008
26 WL 1902108, at *1-2; Green, 2007 WL 2688612, at *2.

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

10
11 The Green court adopted similar reasoning, holding
12 that although the plaintiff alleged an injury in the form
13 of a generalized loss in the potential market value of
14 her house due to excessive foreclosures on other houses
15 in her neighborhood, she did not "suggest that she or any
16 of her other similarly 'injured' neighbors [had] realized
17 this decrease in value (e.g., as a result of sale of the
18 home)." Green, 2007 WL 2688612, at *3. The court thus
19 concluded that the plaintiff's injury was neither
20 concrete nor particularized. Furthermore, it reasoned,
21 "the alleged cause of the decreased value (excessive
22 foreclosures) is of a type which would not necessarily
23 have a long term impact on home prices. This strongly
24 suggests that the injury is conjectural and speculative,
25 and not actual or imminent." Id., citing Lujan, 504 U.S.
26 at 560-61.

1 Here, Plaintiffs have not sold their houses at a loss
2 or suffered any actual loss arising from the harms they
3 allege in the FAC. (See FAC ¶¶ 37, 38.) Thus, like the
4 plaintiffs in Kaing, Tingley, and Green, Plaintiffs have
5 not "realized [a] decrease in value." Kaing, 2010 WL
6 625365, at *5; Tingley, 2008 WL 1902108, at *5 n.3;
7 Green, 2007 WL 2688612, at *3. Furthermore, the injury
8 is speculative, rather than actual or imminent, because
9 economic conditions affecting the value of Plaintiffs'
10 houses are subject to change with broader economic
11 conditions. Green, 2007 WL 2688612, at *3; Tingley, 2008
12 WL 1902108, at *4 ("it is just as plausible that a
13 positive change in the unemployment rate, the housing
14 market, the mortgage interest rates or other economic
15 factors could cause an increase in [Plaintiffs'] property
16 value[s].") (emphasis added). Thus, the alleged decline
17 in value that Plaintiffs claim to have suffered may
18 vanish before Plaintiffs suffer a concrete injury. See
19 Kaing, 2010 WL 625365, citing Lujan, 504 U.S. at 560-61.

20
21 To bolster their claim and distinguish the facts here
22 from Tingley and Green, Plaintiffs allege they suffered
23 additional injuries: "[U]nstable neighborhoods, multiple
24 families living in one home, transient neighbors with no
25 long-term ties to the neighborhood, unfinished and
26 unkempt yards, and in some cases, increased crime." (See
27 Stephens Opp'n at 13.) This attempt fails, however,

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1 because Plaintiffs' FAC contains nothing more than
2 speculation to link these harms to Defendants' conduct or
3 omissions. See Kaing, 2010 WL 625365, at *5-6 (holding
4 that plaintiffs claiming similar injuries failed to
5 allege a cognizable injury in fact). See Section
6 III(A)2, below.

7
8 Plaintiffs also attempt to distinguish this case from
9 Tingley and Green by arguing that the plaintiffs in those
10 cases did not allege a failure to disclose or that the
11 prices of their houses were "artificially inflated" as a
12 result of the defendant homebuilders' conduct. (Stephens
13 Opp'n at 13.) The existence of an additional allegation
14 of harm, however, does not salvage the FAC.

15
16 Moreover, Plaintiffs fail to distinguish their case
17 from Kaing, in which the plaintiff claimed failure to
18 disclose and also alleged she was overcharged. 2010 WL
19 625365, at *2. Plaintiffs fail to persuade the Court
20 that these factors are sufficient to transform their
21 speculative harms into a cognizable injury in fact.

22
23 Plaintiffs rely on Friends of the Earth, Inc. v.
24 Laidlaw Env't Servs. (TOC), Inc., 528 U.S. 167 (2000), to
25 argue they have pled a cognizable injury in fact.
26 (Stephens Opp'n at 9-10.) There, the Supreme Court
27 considered the ability to sue for environmental harm, and
28

1 held that a citizen adequately pled an injury in fact by
2 alleging the defendant's pollution interfered with
3 recreational opportunities. 528 U.S. at 183. Plaintiffs
4 point to language in the opinion referring to an alleged
5 diminution in the value of the litigants' property. Id.
6 at 182-83. A diminution in value that is tied to a
7 physical change in the neighborhood's environment, such
8 as pollution in the case of Friends of the Earth, is
9 better characterized as concrete and particularized, and
10 actual or imminent, than a purely economic change in a
11 neighborhood. Lujan, 504 U.S. at 560-61.

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

4
5 The capacity for Plaintiffs' alleged injury to
6 fluctuate with changes in the economy, "strongly
7 suggests" that Plaintiffs' alleged injury is "conjectural
8 and speculative, not actual or imminent." Green, 2007 WL
9 2688612, at *3; see Sanner v. Bd. of Trade of City of
10 Chicago, 62 F.3d 918, 924 (7th Cir. 1995) (finding
11 soybean farmers who refrained from selling their crops
12 due to a depressed market price lacked standing to sue
13 under Article III, while those who sold at the depressed
14 price enjoyed standing because "[t]he fact of a sale at
15 an allegedly depressed price establishes discernable
16 injury in a manner in which a failure to sell cannot."),
17 citing Blue Chip Stamps v. Manor Drug Stores, 421 U.S.
18 723, 743 (1975).

19
20 Plaintiffs next argue they have suffered an injury in
21 fact because California law permits real estate buyers to
22 sue for rescission and damages when a seller fails to
23 disclose material facts. (Stephens Opp'n at 10-11); see
24 Reed v. King, 145 Cal. App. 2d 261 (1983). This argument
25 fails, however, because it merely states the remedies
26 available to plaintiffs in failure to disclose cases, but
27 does not establish an injury.

28

1 Furthermore, the facts in the cases Plaintiffs cite
2 are distinguishable from the context of this case; the
3 failure to disclose in the former cases recognized a duty
4 to disclose (1) physical defects and legal impediments to
5 use of real property, (Karoutas v. HomeFed Bank, 232 Cal.
6 App. 3d 767, 771 (1991) (finding a duty to disclose where
7 plaintiff's residence had substantial and permanent soil
8 movement that required costly repairs); SanFran Co. v.
9 Rees Blow Pipe Mfg. Co., 168 Cal. App. 2d 191, 205
10 (finding a duty to disclose where a property was missing
11 walls and subject to various building code violations);
12 Graf v. Sumpter, 207 Cal. App. 2d 391, 392-93 (finding a
13 duty to disclose where the land upon which plaintiffs'
14 residence was built was not properly compacted, causing
15 cracking and crumbling of the residence); or (2) in cases
16 of extreme stigma, (Reed v. King, 145 Cal. App. 3d 261,
17 267 (1983) (finding a duty to disclose where residence
18 was site of gruesome multiple murders committed on the
19 property, but noting that such circumstances were "highly
20 unusual"))).

21

22 **2. Overpayment Theory**

23 Finally, as to Plaintiffs' overpayment theory, the
24 Court construes these allegations as an attempt to
25 describe Defendants' motives for issuing subprime loans.
26 To the extent, however, that Plaintiffs allege they
27 overpaid as a result of Defendants' efforts to inflate
28

1 housing demand artificially by offering subprime loans,
2 the Court finds the alleged injury is too speculative to
3 constitute an injury in fact because it is not "concrete
4 or verifiable." See Kaing, 2010 WL 625365, at *3, n.2.
5 Plaintiffs allege that Defendants "market[ed] materials
6 that depicted the community as a stable, family[-]based
7 neighborhood" (FAC ¶¶ 37, 38) and "provided . . . false
8 and misleading standardized representations and
9 advertisements regarding the value of the house sold[,]
10 [t]he sales practice of selling to investors[,] and the
11 desirability of the neighborhood where the house was
12 sold" (FAC ¶ 75). Plaintiffs also allege that Defendants
13 offered subprime loans to "artificially increase[]
14 demand" and thereby increase prices for houses in
15 Plaintiffs' neighborhoods. (FAC ¶¶ 22, 25, 32.) As with
16 Plaintiffs' reduced-value theory, the capacity for
17 Plaintiffs' alleged injury to fluctuate with changes in
18 the economy, "strongly suggests" that Plaintiffs' injury
19 is "conjectural and speculative, not actual or imminent."
20 Green, 2007 WL 2688612, at *3.

21

22 Thus, the Court finds that Plaintiffs have failed to
23 articulate an injury in fact that is "concrete and
24 particularized, and actual or imminent." Cf. Lujan, 504
25 U.S. at 560-61.

26

27 **B. Causation**

28

1 Plaintiffs "face[] a similarly insurmountable problem
2 with respect to the causation element of standing."
3 Kaing, 2010 WL 625365, at *6. Plaintiffs allege they
4 overpaid for their houses and suffered a reduction in the
5 value of their properties caused by Defendants' wrongful
6 acts and omissions. Plaintiffs' injury must be "fairly
7 traceable to the challenged action of the defendant, and
8 not the result of the independent action of some third
9 party not before the court." Lujan, 504 U.S. at 560.
10 "The line of causation between the [alleged] illegal
11 conduct and injury" must not be "too attenuated." Allen
12 v. Wright, 468 U.S. 737, 752 (1984).

13 14 **1. Reduced-Value Theory**

15 Plaintiffs' reduced-value injury is not "fairly
16 traceable" to the challenged action of Defendants.
17 First, any loss in value Plaintiffs have suffered has
18 resulted not just from the actions of Defendants, but
19 also from the independent actions of others, e.g.
20 homeowners in Plaintiffs' neighborhoods who defaulted on
21 their mortgages and third-party mortgage companies that
22 foreclosed on houses in Plaintiffs' neighborhoods.
23 Plaintiffs' theory is premised upon a chain of causation
24 that is affected by general economic factors. These
25 general factors can have unpredictable effects, such as
26 collapse of financial institutions, changes in the credit
27 market, and rising unemployment, which by themselves or
28

1 in combination affect the housing market. In other
2 words, any injuries suffered by Plaintiffs necessarily
3 depend upon a causal chain that includes numerous
4 independent forces and individual decisions of "some
5 third part[ies] not before the court." Lujan, 504 U.S.
6 at 560-61.

7
8 Plaintiffs allege that Defendants (1) "marketed the
9 house and neighborhood as stable and desirable" (FAC ¶¶
10 21, 27, 30, 37-38, 43, 87); (2) sold houses to
11 "unqualified and high-foreclosure-risk buyers" and
12 assisted them in purchasing or financing their houses
13 (FAC ¶¶ 22, 25, 31); (3) sold houses to "investors that
14 were not owner[-]occupiers of the houses," (FAC ¶¶ 46,
15 48); and (4) did not disclose this information to
16 Plaintiffs (FAC ¶ 31, 37-38, 47, 68). Plaintiffs
17 conclude that as a result of Defendants' conduct, the
18 "neighborhoods where Plaintiffs live have had a number of
19 foreclosures," which "have resulted in substantial loss
20 of value to the surrounding homes." (FAC ¶ 50.)

21
22 As Defendants point out, an examination of the causal
23 chain reveals the speculative nature of Plaintiffs'
24 injuries. (Lennar Mot. at 9.) Plaintiffs allege that
25 Defendants sold houses in Plaintiffs' neighborhoods to
26 "unqualified" buyers. Plaintiffs define as "unqualified"
27 those buyers who purchased their houses with less than a
28

1 20% down payment. Later, some of these unqualified
2 buyers defaulted on their mortgage loans. Eventually,
3 third-party mortgage companies foreclosed on those
4 houses; Defendants did not initiate these foreclosure
5 proceedings. The loss of houses due to foreclosure --
6 along with other factors -- eventually contributed to a
7 decrease in the value of Plaintiffs' houses. (See
8 Stephens Opp'n at 9.) When examining the chain of events
9 Plaintiffs allege, it is apparent that the Plaintiffs'
10 alleged injuries necessarily depend upon a causal chain
11 that includes numerous independent forces and individual
12 decisions of "some third part[ies] not before the court."
13 Lujan, 504 U.S. at 560-61.

14
15 Other courts have reached the same conclusion when
16 faced with nearly identical allegations. See Kaing, 2010
17 WL 625365, at *6; Tingley, 2008 WL 1902108, at *4; Green,
18 2007 WL 2688612, at *3. As the Kaing and Tingley courts
19 noted, a causal chain cannot be found or even inferred
20 from such allegations because each link in the chain may
21 be caused by factors other than Defendants' conduct.
22 Kaing, 2010 WL 625365, at *6; Tingley, 2008 WL 1902108,
23 at *4. For example, the other owners may have defaulted
24 on their mortgages as a result of "other factors, such as
25 unemployment, health problems, a general weakening of the
26 economy, or other financial conditions." Tingley, 2008
27 WL 1902108, at *4. Furthermore, there are "intervening
28

1 decisions by the mortgage assignees to foreclose the
2 defaulted mortgages rather than to restructure the loans,
3 which may have been done for reasons totally apart from
4 the alleged fraud." Id.

5
6 The allegations that the depreciation of Plaintiffs'
7 property was caused by the foreclosures in their
8 neighborhood, "rather than as a result of a myriad of
9 other factors, such as rising unemployment in the region,
10 changes in the housing market, or other economic
11 conditions," falls short of the standard required to
12 plead causation. Kainq, 2010 WL 625365, at *6. Although
13 foreclosures can have an adverse impact on property
14 values, supply and demand are affected simultaneously by
15 a number of market factors. See Tingley, 2008 WL
16 1902108, at *4. Any combination of these factors may
17 have caused a reduction in Plaintiffs' property values.
18 See id. Even assuming that the value of Plaintiffs'
19 property was affected adversely by foreclosures in their
20 neighborhoods, the connection "remains too tenuous to
21 provide standing." Id.

22
23 The additional injuries Plaintiffs allege in the FAC
24 -- "unstable neighborhoods, multiple families living in
25 one home, transient neighbors with no long-term ties to
26 the neighborhood, unfinished and unkempt yards, and in
27 some cases, increased crime" -- are not "fairly
28

1 traceable" to the challenged action of Defendants.
2 Viewing the allegations in FAC in the light most
3 favorable to Plaintiffs, Plaintiffs fail to plead facts
4 sufficient "to raise a right to relief above the
5 speculative level." Bell Atlantic, 550 U.S. at 555. The
6 FAC contains nothing more than speculation to link these
7 harms to Defendants' conduct or omissions. See Kaing,
8 2010 WL 625365, at *5-6 (holding that plaintiffs claiming
9 similar injuries failed to allege causation sufficient to
10 survive a motion to dismiss).

11

12 The fragility of the connection between Defendants'
13 alleged conduct and the decreased value of Plaintiffs'
14 houses is illuminated "with each additional link in the
15 chain where the choices of others have an impact and make
16 other scenarios at least as plausible as the one advanced
17 by . . . Plaintiffs." Id. Put into concrete terms,
18 because Plaintiffs still own their properties, a positive
19 change in the unemployment rate, housing market, mortgage
20 interest rates, or other economic factors could cause
21 Plaintiffs' property values to increase, thus decreasing
22 or obviating their alleged losses. Again, other courts
23 reached the same conclusion. Tingley, 2008 WL 1902108,
24 at *4; Green, 2007 WL 2688612, at *3.

25

26 **2. Overpayment Theory**

27

28

1 Turning to Plaintiffs' overpayment theory, the Court
2 construes these allegations as an attempt to describe
3 Defendants' motives for issuing subprime loans. To the
4 extent, however, that Plaintiffs allege they overpaid for
5 their houses as a result of Defendants' efforts to
6 inflate housing demand artificially by offering subprime
7 loans, the causal connection between the alleged
8 overpayment and Defendants' "scheme" depends upon
9 numerous independent factors and third parties not before
10 the court. See Kaing, 2010 WL 625365, at *6.

11
12 The third parties include, for example, the alleged
13 "unqualified" and "investment" buyers to whom Plaintiff
14 also indirectly assign blame for the decrease in their
15 property values. These third parties acted
16 independently, e.g., to default on loan payments, to
17 choose their tenants, or to maintain their properties,
18 which in turn directly affect losses Plaintiffs allegedly
19 suffered, thus making it impossible to trace those losses
20 to Defendants' alleged misconduct.

21
22 Similarly, the "housing bubble," or inflation of
23 housing prices, was a nationwide phenomenon, traceable to
24 variables independent of Defendants' alleged scheme, such
25 as lax regulatory enforcement, rates of unemployment,
26 credit market developments, and general economic growth.
27 As with Plaintiffs' reduced-value theory, it cannot be
28

1 said that the inflated purchase prices Plaintiffs
2 allegedly paid are fairly traceable to Defendants'
3 alleged "scheme."

4 Thus, taking Plaintiffs' allegations as true, as the
5 Court must for these purposes, Plaintiffs' harm is not
6 "fairly traceable" to Defendants' alleged conduct.
7 Plaintiffs, therefore, do not have standing to sue for
8 paying an "inflated" purchase price for their houses or
9 for a subsequent reduction in value of their houses.
10 Hence, the Court lacks subject matter jurisdiction over
11 this action and accordingly DISMISSES the FAC,³ with
12 prejudice.

13
14 **IV. CONCLUSION**

15 For the foregoing reasons, the Court GRANTS
16 Defendants' Motion to Dismiss. As the Court finds that
17 Plaintiffs would be unable to amend their pleadings to
18 correct the deficiencies related to constitutional
19 standing, it dismisses the First Amended Complaint with
20 prejudice.

21
22 The Court DENIES Defendants' Motion to Strike as
23 moot.

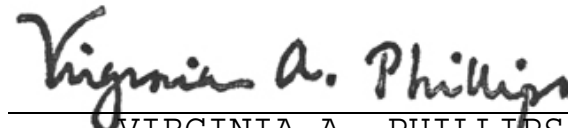
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³ As the Court finds Plaintiffs lack standing to
27 assert their claims, it does not have jurisdiction over
28 this matter. The Court, accordingly, does not reach
Plaintiffs' and Defendants' arguments regarding Rule 9
and 12(b)(6) as to each claim.

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IT IS SO ORDERED.

Dated: March 31, 2010



VIRGINIA A. PHILLIPS
United States District Judge