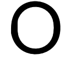

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

MATTHEW NIELSON, NICOLE NIELSON, AS INDIVIDUALS AND ON BEHALF OF ALL OTHER SIMILARLY SITUATED,

Plaintiffs,

v.

SHEA HOMES, INC.; J.F. SHEA CO., INC.; SHEA MORTGAGE INC.; AND DOES 1 THROUGH 10, INCLUSIVE,

Defendants.

Case No. EDCV 09-01673 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.

## I. BACKGROUND

### A. Plaintiff's Allegations

Plaintiffs Matthew Nielsen and Nicole Nielsen (collectively, "Plaintiffs") allege they purchased a new residence in April 2006 in Riverside County, California from Shea Homes, Inc., made a down payment of 30%, financed the balance through Shea Mortgage, Inc. ("Shea Mortgage"), and still own and occupy the residence. (FAC ¶ 35.)

Plaintiffs bring this putative class action on behalf of themselves and a national class including "[a]ll Shea Homes customers who purchased a new Shea 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 Shea Homes customers whose homes are located in California." (FAC ¶¶ 48-49.)

Plaintiffs allege "on information and belief" that before 2004, Defendants Shea Homes, Inc., J.F. Shea Co. Inc., and Shea Mortgage, Inc. (collectively, "Defendants" or "Shea Defendants") implemented a "scheme" to increase the number of houses sold and to increase the amount of profit per sale. (FAC ¶ 18.) The "scheme" was intended to "convince government entities, then the community, and finally buyers that Defendants were building a traditional neighborhood with stable owners who occupied

their homes and who were vested in the community and the neighborhood." (FAC ¶ 19.) "Implicit in this marketing scheme was that Defendants were making a good-faith effort to sell homes to buyers who [Defendants] expected could afford to buy the houses and would be stable neighbors." (Id.)

Plaintiffs allege that they were provided "marketing materials that depicted the community as a stable, family[-]based neighborhood." (FAC ¶ 35.) Plaintiffs also allege "on information and belief" that Defendants represented that they did not sell houses in Plaintiffs' neighborhood to investors who would not occupy the houses. (FAC ¶¶ 19, 25, 38, 40, 43.)

Plaintiffs allege Defendants engaged in a scheme to market the houses to, and provide financing for, "unqualified buyers who posed an abnormally high risk of foreclosure . . . to increase both the number of sales and the prices of the houses in same neighborhoods in which Defendants were selling to traditionally qualified and low-foreclosure- risk buyers." (FAC ¶ 20.) Plaintiffs generally allege that Defendants assisted and encouraged the "unqualified" buyers to appear qualified. (FAC ¶ 23.)

Plaintiffs assert that Defendants "concealed and intentionally failed to disclose to prospective buyers . . . that numerous houses in the neighborhoods were being purchased by unqualified and high-foreclosure-risk buyers, despite Defendants' knowledge that this could, and likely would over time, have a material negative effect on the value and desirability of the house and the neighborhood." (FAC ¶ 29.)

Plaintiffs allege two theories of harm stemming from Defendants' conduct. First, Plaintiffs allege they "paid inflated prices for their houses" (FAC ¶¶ 23, 30, 32, 34, 47) as a result of Defendants' failure to disclose that "Defendants had sold houses . . . to unqualified and high-foreclosure-risk buyers. . . [and] to investors who would not occupy the houses" (FAC ¶¶ 43, 44, 45). Plaintiffs allege they suffered an injury years after purchasing their houses when the real estate market declined and the "unqualified" buyers defaulted on their loans and lost their houses in foreclosure proceedings, which led to a decline in the value of Plaintiffs' residence. (FAC ¶¶ 26, 29, 31, 47.)

**B. Procedural History**

On September 3, 2009, Plaintiffs filed a putative class action against Defendants. On the same day, Plaintiff's counsel filed seven other similar class

actions[1] ("Homebuilder Actions") alleging that the homebuilder defendants and their mortgage lending affiliates engaged in conduct that "artificially inflated" the purchases prices of plaintiffs' residences and eventually reduced their value.

On October 23, 2009, Defendants joined in a "Motion to Consolidate," which sought to consolidate the eight Homebuilder Actions. The Court denied the Motion to Consolidate. On November 18, 2009, the Homebuilder Actions were transferred to this Court. On December 21, 2009, Plaintiffs filed the FAC, which added allegations regarding the Defendants. The substance of the claims remains unchanged.

[1] The Homebuilder Actions are:

- Dodaro v. Standard Pacific Corp., et al., ED09-CV1666-VAP (OPx)
- Stephens, et al. v. Lennar Corp, et al., ED09-CV1668-VAP (DTBx)
- Lumalu et al. v. Richmond American Homes Corp., et al., ED09-CV1669-VAP (OPx)
- Oneto v. The Ryland Group, Inc., et al., ED09-CV1670-VAP (DBTx)
- 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)

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

On January 22, 2010, Defendants filed (1) a Motion to Dismiss the First Amended Complaint ("Motion"), and (2) Request for Judicial Notice ("RJN"). On February 22, 2010, Plaintiffs filed Opposition.[2] On March 4, 2010, Defendants filed a Reply.

Defendants argue the FAC should be dismissed for the following reasons: (1) Plaintiffs lack constitutional standing to bring this action; (2) Plaintiffs fail to allege their fraud-based claims with particularity as required by Rule 9(b); (3) Plaintiffs fail to state a

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

- Stephens, et al. v. Lennar Corp, et al., ED09-CV1668-VAP (DTBx): Plaintiffs' Opposition addresses constitutional standing ("Stephens Opp'n").
- Oneto v. The Ryland Group, Inc., et al., ED09-CV1670-VAP (DBTx): Plaintiffs' Opposition addresses 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.").

claim as to each cause of action under 12(b)(6). (Mot. at 1.)

## II. LEGAL STANDARD FOR MOTION TO DISMISS UNDER RULE 12(b)(6)

Rule 12(b)(6) allows a party to bring a motion to dismiss for failure to state a claim upon which relief can be granted. As a general matter, the Federal Rules require only that a plaintiff provide "'a short and plain statement of the claim' that will give the defendant fair notice of what the plaintiff's claim is and the grounds upon which it rests." Conley v. Gibson, 355 U.S. 41, 47 (1957) (quoting Fed. R. Civ. P. 8(a)(2)); Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007). In addition, the Court must accept all material allegations in the complaint -- as well as any reasonable inferences to be drawn from them -- as true. See Doe v. United States, 419 F.3d 1058, 1062 (9th Cir. 2005); ARC Ecology v. U.S. Dep't of Air Force, 411 F.3d 1092, 1096 (9th Cir. 2005).

"While a complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations, a plaintiff's obligation to provide the 'grounds' of his 'entitlement to relief' requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." Bell Atlantic, 550 U.S. at 555 (citations omitted). Rather,

the allegations in the complaint "must be enough to raise a right to relief above the speculative level." Id.

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

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

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

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**III. DISCUSSION**

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

To satisfy the "case or controversy" requirement, a plaintiff "must demonstrate that he has suffered an 'injury in fact'" that a favorable judgment will redress. Whitmore v. Arkansas, 495 U.S. 149, 155 (1990); Newdow, 542 U.S. at 12, citing Lujan v. Defenders of Wildlife, 504 U.S. 555, 560-561 (1992). In other words, a plaintiff must demonstrate: (1) he has suffered an

"'injury in fact' -- an invasion of a legally protected interest which is (a) concrete and particularized, and (b) actual or imminent, not conjectural or hypothetical"; (2) there is a causal connection between the injury and the conduct complained of -- that is, the injury is "fairly traceable" to the challenged action of the defendant, and not the result of the independent action of some third party not before the court; and (3) it is "likely," as opposed to merely "speculative," that the injury will be redressed by a favorable judicial decision. Lujan, 504 U.S. at 560-61 (footnote, citations, and quotation marks omitted).

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

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

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

**A. Injury in Fact**

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

invasion of a legally protected interest which is (a) concrete and particularized, . . . and (b) actual or imminent, not 'conjectural' or 'hypothetical'.").

As noted above, Plaintiffs allege they were injured by (1) paying "inflated" purchase prices for their house as a result of the "buying frenzy" created because Defendants sold houses to "unqualified" buyers ("overpayment theory") (FAC ¶¶ 20, 34), and (2) suffering a reduction in the value of their property caused by Defendants' wrongful acts and omissions ("reduced-value theory") (FAC ¶¶ 29, 31). These alleged harms fall short of a concrete, particular, and actual injury.

**1. Reduced-Value Theory**

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

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

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

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

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

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

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

Here, Plaintiffs have not sold their house at a loss or suffered any actual loss arising from the harms they allege in the FAC. (See FAC ¶ 35.) Thus, like the plaintiffs in Kaing, Tingley, and Green, Plaintiffs have not "realized [a] decrease in value." Kaing, 2010 WL 625365, at *5; Tingley, 2008 WL 1902108, at *5 n.3; Green, 2007 WL 2688612, at *3. Furthermore, the injury is speculative, rather than actual or imminent, because economic conditions affecting the value of Plaintiffs' house is subject to change with broader economic conditions. Green, 2007 WL 2688612, at *3; Tingley, 2008 WL 1902108, at *4 ("it is just as plausible that a positive change in the unemployment rate, the housing market, the mortgage interest rates or other economic factors could cause an increase in [Plaintiffs'] property value[s].") (emphasis added). Thus, the alleged decline in value that Plaintiffs claim to have suffered may vanish before Plaintiffs suffer a concrete injury. See Kaing, 2010 WL 625365, citing Lujan, 504 U.S. at 560-61.

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

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

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

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

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

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.
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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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complex economic factors that affected the value of Plaintiffs' residence can improve. See Tingley,2008 WL 1902108, at *4 n.3.

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

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

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

**2. Overpayment Theory**

Finally, as to Plaintiffs' overpayment theory, the Court construes these allegations as an attempt to describe Defendants' motives for issuing subprime loans. To the extent, however, that Plaintiffs allege they

1 overpaid as a result of Defendants' efforts to inflate
2 housing demand artificially by offering subprime loans,
3 the Court finds the alleged injury is too speculative to
4 constitute an injury in fact because it is not "concrete
5 or verifiable." See Kaing, 2010 WL 625365, at *3, n.2.
6 Plaintiffs allege that Defendants "market[ed] materials
7 that depicted the community as a stable, family[-]based
8 neighborhood" (FAC ¶ 35) and "provided . . . false and
9 misleading standardized representations and
10 advertisements regarding the value of the house sold[,]
11 [t]he sales practice of selling to investors[,] and the
12 desirability of the neighborhood where the house was
13 sold" (FAC ¶ 72). Plaintiffs also allege that Defendants
14 offered subprime loans to "artificially inflate[] demand"
15 and thereby increase prices for houses in Plaintiffs'
16 neighborhood. (FAC ¶¶ 20, 30, 34.) As with Plaintiffs'
17 reduced-value theory, the capacity for Plaintiffs'
18 alleged injury to fluctuate with changes in the economy,
19 "strongly suggests" that Plaintiffs' injury is
20 "conjectural and speculative, not actual or imminent."
21 Green, 2007 WL 2688612, at *3.
22
23 Thus, the Court finds that Plaintiffs have failed to
24 articulate an injury in fact that is "concrete and
25 particularized, and actual or imminent." Cf. Lujan, 504
26 U.S. at 560-61.
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**B. Causation**

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

**1. Reduced-Value Theory**

Plaintiffs' reduced-value injury is not "fairly traceable" to the challenged action of Defendants. First, any loss in value Plaintiffs have suffered has resulted not just from the actions of Defendants, but also from the independent actions of others, e.g. homeowners in Plaintiffs' neighborhood who defaulted on their mortgages and third-party mortgage companies that foreclosed on houses in Plaintiffs' neighborhood. Plaintiffs' theory is premised upon a chain of causation that is affected by general economic factors. These general factors can have unpredictable effects, such as

collapse of financial institutions, changes in the credit market, and rising unemployment, which by themselves or in combination affect the housing market. In other words, any injuries suffered by Plaintiffs necessarily depend upon a causal chain that includes numerous independent forces and individual decisions of "some third part[ies] not before the court." Lujan, 504 U.S. at 560-61.

Plaintiffs allege that Defendants (1) "marketed the house and neighborhood as stable and desirable" (FAC ¶¶ 19, 25, 28, 84, 91); (2) sold houses to "unqualified and high-foreclosure-risk buyers" and assisted them in purchasing or financing their houses (FAC ¶¶ 20, 23, 29); (3) sold houses to "investors that were not owner[-] occupiers of the houses," (FAC ¶¶ 43, 45); and (4) did not disclose this information to Plaintiffs (FAC ¶ 29, 32, 35, 44, 65). Plaintiffs conclude that as a result of Defendants' conduct, the "neighborhoods where Plaintiffs live have had a number of foreclosures," which "have resulted in substantial loss of value to the surrounding homes." (FAC ¶ 47.)

As Defendants point out, an examination of the causal chain reveals the speculative nature of Plaintiffs' injuries. (Lennar Mot. at 9.) Plaintiffs allege that Defendants sold houses in Plaintiffs' neighborhood to

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

Other courts have reached the same conclusion when faced with nearly identical allegations. See Kaing, 2010 WL 625365, at *6; Tingley, 2008 WL 1902108, at *4; Green, 2007 WL 2688612, at *3. As the Kaing and Tingley courts noted, a causal chain cannot be found or even inferred from such allegations because each link in the chain may be caused by factors other than Defendants' conduct. Kaing, 2010 WL 625365, at *6; Tingley, 2008 WL 1902108, at *4. For example, the other owners may have defaulted on their mortgages as a result of "other factors, such as unemployment, health problems, a general weakening of the

1 economy, or other financial conditions." Tingley, 2008
2 WL 1902108, at *4. Furthermore, there are "intervening
3 decisions by the mortgage assignees to foreclose the
4 defaulted mortgages rather than to restructure the loans,
5 which may have been done for reasons totally apart from
6 the alleged fraud." Id.
7
8 The allegations that the depreciation of Plaintiffs'
9 property was caused by the foreclosures in their
10 neighborhood, "rather than as a result of a myriad of
11 other factors, such as rising unemployment in the region,
12 changes in the housing market, or other economic
13 conditions," falls short of the standard required to
14 plead causation. Kaing, 2010 WL 625365, at *6. Although
15 foreclosures can have an adverse impact on property
16 values, supply and demand are affected simultaneously by
17 a number of market factors. See Tingley, 2008 WL
18 1902108, at *4. Any combination of these factors may
19 have caused a reduction in Plaintiffs' property value.
20 See id. Even assuming that the value of Plaintiffs'
21 property was affected adversely by foreclosures in their
22 neighborhood, the connection "remains too tenuous to
23 provide standing." Id.
24
25 The additional injuries Plaintiffs allege in the FAC
26 -- "unstable neighborhoods, multiple families living in
27 one home, transient neighbors with no long-term ties to
28

the neighborhood, unfinished and unkempt yards, and in some cases, increased crime" -- are not "fairly traceable" to the challenged action of Defendants. Viewing the allegations in FAC in the light most favorable to Plaintiffs, Plaintiffs fail to plead facts sufficient "to raise a right to relief above the speculative level." Bell Atlantic, 550 U.S. at 555. The FAC contains nothing more than speculation to link these harms to Defendants' conduct or omissions. See Kaing, 2010 WL 625365, at *5-6 (holding that plaintiffs claiming similar injuries failed to allege causation sufficient to survive a motion to dismiss).

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

**2. Overpayment Theory**

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

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

Similarly, the "housing bubble," or inflation of housing prices, was a nationwide phenomenon, traceable to variables independent of Defendants' alleged scheme, such as lax regulatory enforcement, rates of unemployment,

credit market developments, and general economic growth. As with Plaintiffs' reduced-value theory, it cannot be said that the inflated purchase prices Plaintiffs allegedly paid are fairly traceable to Defendants' alleged "scheme."

Thus, taking Plaintiffs' allegations as true, as the Court must for these purposes, Plaintiffs' harm is not "fairly traceable" to Defendants' alleged conduct. Plaintiffs, therefore, do not have standing to sue for paying an "inflated" purchase price for their house or for a subsequent reduction in value of their house. Hence, the 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 Plaintiffs would be unable to amend their pleadings to correct the deficiencies related to constitutional standing, it dismisses the First Amended Complaint with prejudice.

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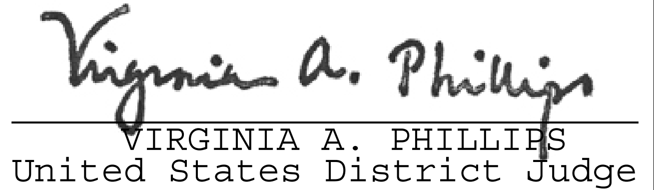
[3] As the Court finds Plaintiffs lack standing to assert their claims, it does not have jurisdiction over this matter. The Court, accordingly, does not reach Plaintiffs' and Defendants' arguments regarding Rule 9 and 12(b)(6) as to each claim.

The Court DENIES Defendants' Motion to Strike as moot.

**IT IS SO ORDERED.**



Dated: March 31, 2010

VIRGINIA A. PHILLIPS
United States District Judge