

February 2013

## Maya v. Centex: Potential Liabilities for Developers Related to Speculative Injuries

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### Recommended Citation

Alexander Cheung, *Maya v. Centex: Potential Liabilities for Developers Related to Speculative Injuries*, 43 Golden Gate U. L. Rev. 147 (2013).  
<http://digitalcommons.law.ggu.edu/ggulrev/vol43/iss1/9>

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## CASE SUMMARY

# *MAYA v. CENTEX*: POTENTIAL LIABILITIES FOR DEVELOPERS RELATED TO SPECULATIVE INJURIES

ALEXANDER CHEUNG\*

### INTRODUCTION

Prior to the sub-prime mortgage crisis from 2007 to 2010,<sup>1</sup> many lenders approved substantial mortgages to prospective homebuyers who lacked adequate financing.<sup>2</sup> Various market factors encouraged lenders and prospective homeowners to engage in the housing market, including “[f]avorable tax laws, high-leverage loan creativity, baby boomers

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<sup>1</sup> MICHAEL T. MADISON, JEFFRY R. DWYER & STEVEN W. BENDER, *THE LAW OF REAL ESTATE FINANCING* § 3:5 (rev. ed. 2012), available at Westlaw REFINLAW § 3:5 (stating that the real estate decline from 2007 to 2010 was similar to the balance-sheet recession in the early 1990s); Justin Pritchard, *Mortgage Crisis Overview: What Caused the Mortgage Crisis?*, ABOUT.COM Banking/Loans, [banking.about.com/od/mortgages/a/mortgagecrisis.htm](http://banking.about.com/od/mortgages/a/mortgagecrisis.htm) (last visited Sept. 24, 2012) (stating that the mortgage crisis that reached the U.S. economy in 2007 was due to multiple factors, including greed, fraud, and excessive borrowing).

<sup>2</sup> Broderick Perkins, *Housing Market Was 2006's Top Business Story*, REALTY TIMES (Jan. 3, 2007), [realtymtimes.com/rtpages/20070103\\_topstory.htm](http://realtymtimes.com/rtpages/20070103_topstory.htm) (“At the housing market’s peak, buyers rushed to open houses, blank checks in hand. Lenders gave big-money mortgages to people who could barely afford their monthly payments.” (quoting AP’s Ellen Simon)).

buying second[] [houses] and day traders who became housing market speculators.”<sup>3</sup> In 2007, however, the commercial and residential real estate market rapidly declined, while lenders reduced the availability of credit.<sup>4</sup> With limited access to credit, buyers financially incapable of supporting their mortgages defaulted, resulting in “foreclosures reach[ing] historic proportions in some demographic segments.”<sup>5</sup>

Sub-prime mortgage loans contributed significantly to the collapse of the real estate market.<sup>6</sup> A traditional, prime loan ordinarily consists of a thirty-year fixed-rate mortgage for eighty percent of the purchase price, requiring a down payment of twenty percent.<sup>7</sup> Lenders, however, frequently approved sub-prime loans requiring very little or no down payment.<sup>8</sup> Often, these loans were offered with little regard as to borrowers’ financial ability to repay the loans.<sup>9</sup>

Homeowners with sub-prime mortgages are more likely to be unable to make mortgage payments because they lacked adequate financial means at the time of the loan, and likely still do not have the means.<sup>10</sup> A homeowner who is unable to pay the mortgage, refinance the loan, or sell the house might resort to desertion.<sup>11</sup> Voluntarily

<sup>3</sup> *Id.*

<sup>4</sup> MADISON ET AL., *supra* note 1, § 3.5 (“[I]n 2007 the commercial and multi-family real estate markets declined amid both a severe credit crunch and a steep recession in both the United States and in the global economy.”).

<sup>5</sup> Perkins, *supra* note 2; MADISON ET AL., *supra* note 1, § 3.5 (“The Federal Reserve Board’s flow of funds report issued on March 20, 2008 indicate[d] that home equity declined to a record low of 47.9% in the fourth quarter of 2007, the first time that homeowner debt on their homes exceeded their equity since the Board started to track home equity data in 1945.”).

<sup>6</sup> Stephanie Armour, *Foreclosures Skyrocket 65% in April*, USA TODAY (May 14, 2008), [www.usatoday.com/money/economy/housing/2008-05-14-foreclosures-mortgage-apps\\_N.htm](http://www.usatoday.com/money/economy/housing/2008-05-14-foreclosures-mortgage-apps_N.htm) (“Those hardest hit by the tsunami of foreclosures included Arizona, California, Florida and Nevada—states where runaway subprime lending and escalating home prices symbolized the real estate boom that fizzled in 2006.”).

<sup>7</sup> Oren Bar-Gill, *The Law, Economics and Psychology of Subprime Mortgage Contracts*, 94 CORNELL L. REV. 1073, 1096 (2009).

<sup>8</sup> Les Christie, *Homeowners: Can’t Pay? Just Walk Away*, CNNMONEY.COM (Feb. 7, 2008), [money.cnn.com/2008/02/06/real\\_estate/walking\\_away/index.htm](http://money.cnn.com/2008/02/06/real_estate/walking_away/index.htm) (stating that most buyers’ down payments were little to nothing, giving little incentive to continue bad investments).

<sup>9</sup> Ann M. Burkhart, *Real Estate Practice in the Twenty-first Century*, 72 MO. L. REV. 1031, 1045-46 (2007) (lenders made close to forty-five percent of the subprime loans with little or no documentation of the borrower’s income).

<sup>10</sup> WILLIAM C. APGAR, THE MUNICIPAL COST OF FORECLOSURES: A CHICAGO CASE STUDY 2 (2005), *available at* [www.nw.org/network/neighborworksProgs/foreclosuresolutions/pdf\\_docs/2005Apgar-Dudastudy-FullVersion.pdf](http://www.nw.org/network/neighborworksProgs/foreclosuresolutions/pdf_docs/2005Apgar-Dudastudy-FullVersion.pdf) (stating that the poor credit of borrowers of nonprime loans was an obvious factor, among others, as to why the foreclosure rate of nonprime loans can exceed the foreclosure rate of prime loans by ten times).

<sup>11</sup> Alan Mallach, *Abandoned Property: Effective Strategies To Reclaim Community Assets, Housing Facts & Findings*, May 10, 2004, at 5-6, *available at* [www.knowledgeplex.org/cache/documents/30370.pdf](http://www.knowledgeplex.org/cache/documents/30370.pdf) (stating that homeowners and heirs abandon

abandoning a home financed by a sub-prime loan may be an economically rational decision for a borrower who contributed little to no down payment, because he or she has little incentive to repay the loan.<sup>12</sup> Homeowners who walked away from bad deals may have cut their personal losses, but damages from foreclosed and abandoned properties do not stop with the deserter.<sup>13</sup>

Foreclosed and vacant properties can cause dire consequences in their communities.<sup>14</sup> Foreclosed and deserted homes often become a breeding ground for various criminal activities.<sup>15</sup> These non-pecuniary, quality-of-life issues are often of great concern to families and prospective homebuyers, and can lead to decreased desirability of the properties surrounding foreclosed and abandoned homes, ultimately decreasing the surrounding properties' value.<sup>16</sup>

The Ninth Circuit's decision in *Maya v. Centex* addresses the impacts of the sub-prime mortgage crisis on fiscally responsible homeowners.<sup>17</sup> *Maya* is the first appellate decision to potentially permit homeowners to assert claims against developers for injuries related to market-wide decline in property values.<sup>18</sup> In *Maya*, the Ninth Circuit decided only the narrow question of whether plaintiff-homeowners have constitutional standing to pursue claims against defendant-developers for injuries that were allegedly caused by the defendants' high-risk

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their properties when they believe that the properties cannot be sold in the marketplace due to its locality or a certain condition of it).

<sup>12</sup> Christie, *supra* note 8 (stating that a homeowner who abandons a home that was financed by a subprime loan may be better off economically than trying to continue making mortgage payments. For example, "[s]omeone with good credit and a \$600,000 home in a town with cratering real estate prices could buy a similar house nearby for \$450,000, and then let the other \$600,000 mortgage go into foreclosure" because "[c]redit scores are hurt much more by missing multiple payments . . . than by a single foreclosure.").

<sup>13</sup> Mallach, *supra* note 11, at 5-6 ("The presence of abandoned property decreases a community's property values, discourages investment by existing residents and potential developers, and may encourage further abandonment.").

<sup>14</sup> *Id.* ("A Philadelphia study found that the presence of one abandoned property on a block reduced the value of the other properties on the block by nearly \$6,500 each.").

<sup>15</sup> *Id.* at 6 (stating that vacant properties often become a venue for various criminal activities, "including prostitution and drug trafficking"); APGAR, *supra* note 10, at 10 (stating that police officers observe at abandoned properties a wide range of criminal conduct, "including gang activity, drug dealing, prostitution, arson, rape, and even murder").

<sup>16</sup> Mallach, *supra* note 11, at 3, 5-6; *see also id.* at 7 (quoting Mayor John F. Street).

<sup>17</sup> *Maya v. Centex Corp.*, 658 F.3d 1060, 1065 (9th Cir. 2011).

<sup>18</sup> *Subdivision Homeowners Have Standing To Sue Developer Claiming Its Marketing of Homes to Unqualified Applicants Led to Inordinate Foreclosures and Drop in Property Values*, CAL. TORT. REP., Oct. 2011, available at Westlaw 32 No. 9 CAL. TORT REP. 3; Dan Schechter, *Developers and Lenders May Be Liable for Artificially Creating Demand Within New Housing Tract, Thus Causing Buyers To Overpay*, COMM. FIN. NEWS, Sept. 26, 2011, available at Westlaw 2011 COMM. FIN. NEWS 78.

marketing and financing behaviors.<sup>19</sup> Although the Ninth Circuit did not resolve the plaintiffs' claims, it held that the plaintiffs have constitutional standing to assert their claims against the defendants.<sup>20</sup> In doing so, the Ninth Circuit may have extended liability to developers for speculative injuries that may not be fairly traceable to the developers' challenged conduct.

I. *MAYA V. CENTEX: GREED AND FRAUD, THE "BUYING FRENZY" LAWSUIT*

A. FACTS AND PROCEDURAL HISTORY

In *Maya v. Centex*, plaintiffs Sylvester Maya and Ofer Masachi brought a putative class action on behalf of themselves and other similarly situated homeowners.<sup>21</sup> Both plaintiffs had purchased residential realty from Centex Homes in November 2005 in San Bernardino County, California.<sup>22</sup> Defendants Centex Corporation, Centex Homes, and CTX Mortgage Company,<sup>23</sup> together, were one of the biggest housing developers in the nation.<sup>24</sup>

Plaintiffs alleged that defendants created a "buying frenzy" that raised housing demand and prices through the misrepresentation and omission of material facts related to the defendants' challenged conduct.<sup>25</sup> Plaintiffs argued that defendants' alleged high-risk marketing and financing behavior were material to their home-buying decisions because the risk of numerous foreclosures in the plaintiffs' communities could severely decrease the value and desirability of the community and the properties within.<sup>26</sup>

In order to attract prospective homeowners to purchase homes, defendants allegedly devised a marketing scheme to raise housing profits and demand through misrepresenting the new developments as a community of stable families.<sup>27</sup> In furtherance of their marketing scheme, defendants assisted and facilitated home purchases within

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<sup>19</sup> *Maya*, 658 F.3d at 1065.

<sup>20</sup> *Id.* at 1073.

<sup>21</sup> *Maya v. Centex Corp.*, No. EDCV 09-01671 VAP (OPx), 2010 WL 6843322, at \*1 (C.D. Cal. Mar. 31, 2010), *rev'd*, 658 F.3d 1060 (9th Cir. 2011).

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> *Maya*, 658 F.3d at 1065.

<sup>25</sup> *Id.*

<sup>26</sup> *Id.* at 1065-66.

<sup>27</sup> *Maya*, 2010 WL 6843322, at \*1.

plaintiffs' particular neighborhood to unqualified buyers who were highly susceptible to the risk of foreclosure.<sup>28</sup> Defendants' financing subsidiaries financed the unqualified buyers' mortgages.<sup>29</sup> Further, defendants sold homes to speculators and investors who had no intention of actually residing within the community.<sup>30</sup> Plaintiffs claimed that defendants "concealed and intentionally failed to disclose" these facts to the plaintiff-homebuyers.<sup>31</sup>

Plaintiffs alleged five claims, including fraud, negligent misrepresentation, and breach of the implied covenant of good faith and fair dealing.<sup>32</sup> Additionally, plaintiffs claimed violation of California's Unfair Business Practices Act and false advertising law.<sup>33</sup> Plaintiffs sought compensatory damages and the right to rescind their home purchases, in addition to attorney's fees and costs.<sup>34</sup>

The defendants made similar arguments in their respective motions to dismiss.<sup>35</sup> First, they argued that the plaintiffs had neither constitutional nor statutory standing to invoke federal jurisdiction.<sup>36</sup> Second, they argued that the plaintiffs' allegations failed to meet the pleading requirements of Federal Rule of Civil Procedure 9(b) because plaintiffs failed to plead with particularity the circumstances to support their fraud-based claims.<sup>37</sup> Third, the defendants argued that the plaintiffs failed to state a claim upon which the court may grant relief under Federal Rule of Civil Procedure 12(b)(6).<sup>38</sup>

The United States District Court for the Central District of California dismissed the plaintiffs' claims for lack of constitutional standing, finding that the plaintiffs failed to meet two requirements for standing: injury-in-fact and causation.<sup>39</sup> Specifically, the district court

<sup>28</sup> *Id.* at \*1-2.

<sup>29</sup> *Maya*, 658 F.3d at 1065 (Plaintiffs "allege[d] that defendants financed at least [sixty-five percent] of the mortgages on homes in their communities").

<sup>30</sup> *Maya*, 2010 WL 6843322, at \*1-2.

<sup>31</sup> *Id.* at \*2.

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*; see CAL. BUS. & PROF. CODE §§ 17200, 17500 (Westlaw 2013).

<sup>34</sup> *Maya*, 658 F.3d at 1065; see also First Amended Complaint at ¶¶ 61-78, *Maya*, 2010 WL 6843322 (No. 509CV01671), 2009 WL 5439289.

<sup>35</sup> *Maya*, 2010 WL 6843322, at \*2; *Maya*, 658 F.3d at 1066.

<sup>36</sup> *Maya*, 2010 WL 6843322, at \*2; *Maya*, 658 F.3d at 1066.

<sup>37</sup> *Maya*, 2010 WL 6843322, at \*2; *Maya*, 658 F.3d at 1066; see FED. R. CIV. P. 9(b) (requiring that the pleading party allege with particularity the circumstances warranting a claim for fraud).

<sup>38</sup> *Maya*, 2010 WL 6843322, at \*2; *Maya*, 658 F.3d at 1066; see FED. R. CIV. P. 12(b)(6).

<sup>39</sup> *Maya*, 658 F.3d at 1066 (noting that the district court relied on three cases with similar facts and held that plaintiffs failed to allege a sufficient injury in fact for constitutional standing (citing *Kaing v. Pulte Homes, Inc.*, No. 09-5057 SC, 2010 WL 625365 (N.D. Cal. Feb. 18, 2010);

found that the plaintiffs' alleged injuries were not actual injuries-in-fact<sup>40</sup> and that causation between the plaintiffs' alleged injuries and the defendants' challenged conduct of high-risk marketing and financing behavior was not established.<sup>41</sup> Plaintiffs appealed the district court's decision to the Ninth Circuit after their request for leave to amend was denied.<sup>42</sup>

#### B. THE NINTH CIRCUIT'S DECISION

The Ninth Circuit disagreed with the district court and clarified the proper standard of review for constitutional standing, distinguishing it from the analysis required for statutory standing.<sup>43</sup> The Ninth Circuit held that plaintiffs had constitutional standing to pursue their claims against defendants, but in holding so, the court addressed only the first two elements of constitutional standing, because all parties acknowledged that a favorable ruling would redress the plaintiffs' alleged injuries.<sup>44</sup>

The Ninth Circuit categorized plaintiffs' claimed damages into two broad categories: at-time-of-sale injuries and after-sale injuries.<sup>45</sup> Plaintiffs' overpayment and rescission claims were considered injuries that occurred at the time of the sale.<sup>46</sup> The Ninth Circuit recognized plaintiffs' overpayment and rescission claims as actual and concrete economic injuries that occurred at the time of purchase.<sup>47</sup> The Ninth Circuit further found that plaintiffs had established causation for their overpayment and rescission claims, because defendants were able to influence the terms of many buyers' loans in plaintiffs' particular communities to "create demands that would not otherwise have existed."<sup>48</sup>

Plaintiffs' claims for decreased property value and desirability were considered injuries that occurred after the sale.<sup>49</sup> The Ninth Circuit

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Tingley v. Beazer Homes Corp., No. 3:07cv176, 2008 WL 1902108 (W.D.N.C. Apr. 25, 2008); Green v. Beazer Homes Corp., No. 3:07-1098-CMC, 2007 WL 2688612, (D.S.C. Sept. 10, 2007)).

<sup>40</sup> *Maya*, 2010 WL 6843322, at \*5.

<sup>41</sup> *Id.* at \*11; *Maya*, 658 F.3d at 1066.

<sup>42</sup> *Maya*, 658 F.3d 1060.

<sup>43</sup> *See id.* at 1067.

<sup>44</sup> *Id.* at 1069.

<sup>45</sup> *Id.* at 1066.

<sup>46</sup> *Id.* (noting that plaintiffs allegedly would not have purchased overvalued properties had defendants disclosed facts that were material to evaluating the properties' true value).

<sup>47</sup> *Id.* at 1069 (stating that the Supreme Court and the Ninth Circuit have recognized clear and obvious economic injuries as a sufficient basis for standing).

<sup>48</sup> *Id.* at 1070.

<sup>49</sup> *Id.* at 1066.

recognized plaintiffs' decreased value and desirability claims as cognizable injuries for constitutional standing purposes.<sup>50</sup> The Ninth Circuit, however, held that plaintiffs did not establish sufficient causation for constitutional standing because any loss related to such claims could be ascribed to other, third-party actors not involved in the lawsuit.<sup>51</sup> But the court did permit plaintiffs to amend their complaints and to provide expert testimony to show causation between defendants' alleged misconduct and plaintiffs' decreased property value and desirability claims.<sup>52</sup> Further, the court noted that expert testimony could be used to distinguish the causal link from other possible independent third parties who may have contributed to plaintiffs' alleged losses.<sup>53</sup>

## II. THE NINTH CIRCUIT'S STANDING ANALYSIS

### A. CONSTITUTIONAL STANDING

Constitutional standing—the constitutional limitation on the federal judiciary to hear only those cases or controversies over which it has federal subject matter jurisdiction<sup>54</sup>—is the deciding factor in “whether [a plaintiff] is entitled to have the [federal] court [to] decide the merits of” a plaintiff's claims.<sup>55</sup> A plaintiff who seeks the jurisdiction of the federal court system must satisfy three requirements to establish that he or she has constitutional standing: injury-in-fact, causation, and redressability.<sup>56</sup>

A plaintiff must prove that he or she suffered an “injury in fact” that involves the intrusion of a legally protected right.<sup>57</sup> Two components

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<sup>50</sup> *Id.* at 1070-71.

<sup>51</sup> *Id.* at 1072 (“We agree with the district court that plaintiffs have not established how defendants' actions *necessarily* result in foreclosure, nor do plaintiffs' complaints allege that the decreased value is caused by the *risk* posed by their neighbors (even absent foreclosures).” (footnote omitted)); *Maya v. Centex Corp.*, No. EDCV 09-01671 VAP (OPx), 2010 WL 6843322, at \*9 (C.D. Cal. Mar. 31, 2010), *rev'd*, 658 F.3d 1060 (9th Cir. 2011).

<sup>52</sup> *Maya*, 658 F.3d at 1072-73 (citing *Barnum Timber Co. v. EPA*, 633 F.3d 894, 900-01 (9th Cir. 2011)).

<sup>53</sup> *Id.*

<sup>54</sup> U.S. CONST. art. III, § 2, cl. 1; *Jasmine Networks, Inc. v. Superior Court*, 180 Cal. App. 4th 980, 990 (6th Dist. 2009).

<sup>55</sup> *Allen v. Wright*, 468 U.S. 737, 750-51 (1984) (quoting *Warth v. Seldin*, 422 U.S. 490, 498 (1975)).

<sup>56</sup> *Maya*, 658 F.3d at 1067 (citing *Friends of the Earth, Inc., v. Laidlaw Envtl. Servs. (TOC), Inc.*, 528 U.S. 167, 180-81 (2000) (citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992))).

<sup>57</sup> *Id.* (citing *Friends of the Earth*, 528 U.S. at 180-81).

determine whether a plaintiff has suffered an injury-in-fact.<sup>58</sup> First, a plaintiff's injury must be "concrete and particularized."<sup>59</sup> Second, plaintiff must have suffered actual losses, damages, or injury, or be able to show that such a loss is likely to occur,<sup>60</sup> and the injury must not be speculative.<sup>61</sup> Economic injuries can satisfy this requirement.<sup>62</sup> The purpose of these two components is to gauge whether the injury is too abstract to be judicially cognizable.<sup>63</sup>

The injury-in-fact requirement may also encompass alleged injuries that are dependent on future events.<sup>64</sup> Although standing is not established when the alleged injury depends on the occurrence of "contingent future events that may not occur as anticipated, or indeed may not occur at all,"<sup>65</sup> a contingent liability—one whose occurrence is dependent on the outcome of a future event—may constitute an injury-in-fact if it encompasses actual and imminent consequences.<sup>66</sup>

Second, the party who invokes federal jurisdiction must establish a causal connection between the alleged injury-in-fact and the defendant's challenged conduct.<sup>67</sup> That is, plaintiff's claimed injury must be "fairly traceable" to the defendant's particular acts or omissions.<sup>68</sup> A causal chain that involves numerous links does not necessarily render the causal relationship too tenuous if those links are not speculative.<sup>69</sup>

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<sup>58</sup> *Id.* (citing *Friends of the Earth*, 528 U.S. at 180-81 (plaintiff must have suffered an "injury in fact" that is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical)).

<sup>59</sup> *Id.*

<sup>60</sup> *Gladstone Realtors v. Vill. of Bellwood*, 441 U.S. 91, 100 (1979) (plaintiff must show that he or she has suffered an actual loss, damage or injury, or is threatened with impairment of his or her own interests).

<sup>61</sup> *Maya*, 658 F.3d at 1069.

<sup>62</sup> *Id.* (noting that the Supreme Court and the Ninth Circuit have recognized clear and obvious economic injuries as a sufficient basis for standing).

<sup>63</sup> 7 B.E. WITKIN, SUMMARY OF CALIFORNIA LAW, *Constitutional Law* § 76 (10th ed. 2005).

<sup>64</sup> *See, e.g., Clinton v. City of N.Y.*, 524 U.S. 417, 431 (1998) ("[A] substantial contingent liability immediately and directly affects the borrowing power, financial strength, and fiscal planning of the potential obligor.").

<sup>65</sup> *See Texas v. United States*, 523 U.S. 296, 300 (1998) (internal quotation marks omitted) (quoting *Thomas v. Union Carbide Agric. Prods. Co.*, 473 U.S. 568, 580-81, (1985) (dealing with ripeness doctrine, but standard is presumably the same)).

<sup>66</sup> *Clinton*, 524 U.S. at 431.

<sup>67</sup> *Maya*, 658 F.3d at 1070 ("To survive a motion to dismiss for lack of constitutional standing, plaintiffs must establish a 'line of causation' between defendants' action and their alleged harm that is more than 'attenuated.'" (footnote omitted) (quoting *Allen v. Wright*, 468 U.S. 737, 757 (1984))).

<sup>68</sup> *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 559-60 (1992); *Allen*, 468 U.S. at 757.

<sup>69</sup> *Maya*, 658 F.3d at 1070 ("A causal chain does not fail simply because it has several 'links,' provided those links are 'not hypothetical or tenuous' and remain '[plausible].'"

Finally, constitutional standing requires that the plaintiff establish a substantial likelihood that the relief sought will redress the alleged injury.<sup>70</sup> It is not enough that a favorable judgment will punish the defendant or simply give plaintiff satisfaction; a decision in favor of the plaintiff must likely, rather than conjecturally, redress the plaintiff's injury-in-fact.<sup>71</sup>

#### B. STATUTORY STANDING

For statutory standing under Federal Rule of Civil Procedure 12(b)(6), the analysis is mainly restricted to the content of a plaintiff's complaint under the standards of *Bell Atlantic Corp. v. Twombly* and *Ashcroft v. Iqbal*.<sup>72</sup> Under *Twombly*, a plaintiff must plead factual allegations that are strong enough to support a plaintiff's right to relief, and the pleadings must be "plausible on [their] face"—a standard that is higher than mere speculation.<sup>73</sup> Under *Iqbal*, plausibility requires the factual content of a plaintiff's pleadings to be such that the court may reasonably infer that the defendant is likely liable for the particular challenged act or omission.<sup>74</sup>

Taken together, *Twombly* and *Iqbal* address the merits of a claim, or its legality, to measure whether a plaintiff has stated a claim upon which the court can grant relief.<sup>75</sup> With *Twombly* and *Iqbal*, the Court developed two-prong approach to address how a plaintiff's pleading may survive a motion to dismiss for failure to state a claim.<sup>76</sup> First, the reviewing court need not credit mere legal conclusions.<sup>77</sup> Second, the

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<sup>70</sup> *Id.* at 1067.

<sup>71</sup> *See, e.g.,* *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 107 (1998) (psychic satisfaction is not enough for Art III standing).

<sup>72</sup> *Maya*, 658 F.3d at 1067-68.

<sup>73</sup> *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007) (stating that a plaintiff must only plead enough facts to support a claim for relief that is "plausible on its face," effectively requiring that claim be more than merely conceivable).

<sup>74</sup> *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) ("A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.").

<sup>75</sup> *Iqbal*, 556 U.S. at 679 ("In keeping with these principles [of *Twombly*] a court considering a motion to dismiss can choose to begin by identifying pleadings that, because they are no more than conclusions, are not entitled to the assumption of truth. While legal conclusions can provide the framework of a complaint, they must be supported by factual allegations. When there are well-pleaded factual allegations, a court should assume their veracity and then determine whether they plausibly give rise to an entitlement to relief.").

<sup>76</sup> *Maya*, 658 F.3d at 1067-68.

<sup>77</sup> *Id.* at 1067.

reviewing court must examine the factual allegations to determine if they state a plausible claim for relief.<sup>78</sup>

### C. THE NINTH CIRCUIT’S CLARIFICATION OF THE STANDARD OF REVIEW FOR CONSTITUTIONAL STANDING

The Ninth Circuit held that the district court inappropriately dismissed the plaintiffs’ claims for lack of constitutional standing under Rule 12(b)(6)—failure to state a claim upon which the court may grant relief.<sup>79</sup> If a plaintiff does not meet the requirements for constitutional standing, the court “*lack[s] [the] power to entertain the proceeding*” and must dismiss the action under Rule 12(b)(1) for lack of subject matter jurisdiction.<sup>80</sup> The absence of statutory standing, rather than constitutional standing, requires a court to dismiss a plaintiff’s claim under Rule 12(b)(6).<sup>81</sup> Thus, the Ninth Circuit found that the district court engaged in an improper scope of review of the plaintiffs’ claims.<sup>82</sup>

The Ninth Circuit held that the district court erred in dismissing the plaintiffs’ claims for lack of constitutional standing under Rule 12(b)(6) because *Twombly* and *Iqbal*—the cases defining statutory standing requirements—are not applicable within the context of constitutional standing.<sup>83</sup> The elements of constitutional standing—*injury-in-fact*, *causation*, and *redressability*—turn on the “*nature and source*” of a plaintiff’s asserted claim.<sup>84</sup> That is, the substance of constitutional standing is to measure whether a plaintiff’s pleadings show a sufficient personal stake in the outcome of his or her claim so as to call upon the federal courts’ jurisdiction for redressability.<sup>85</sup>

The context of constitutional standing is a question of subject matter jurisdiction under Rule 12(b)(1), which is distinct from the analysis of the merits of a plaintiff’s claims under *Twombly* and *Iqbal*.<sup>86</sup> Accordingly, the Ninth Circuit held that analysis of a plaintiff’s merits is

<sup>78</sup> *Id.* at 1067-68.

<sup>79</sup> *Id.* at 1073; *see* FED. R. CIV. P. 12(b)(6).

<sup>80</sup> *Jasmine Networks, Inc. v. Superior Court*, 180 Cal. App. 4th 980, 990 (6th Dist. 2009) (citation omitted); *Maya*, 658 F.3d at 1067; U.S. CONST. art. III, § 2, cl. 1; *see* FED. R. CIV. P. 12(b)(1).

<sup>81</sup> *Maya*, 658 F.3d at 1067.

<sup>82</sup> *Id.*

<sup>83</sup> *Id.* at 1067-68 (citing *Ashcroft v. Iqbal*, 556 U.S. 662 (2009); *Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (2007)).

<sup>84</sup> *Warth v. Seldin*, 422 U.S. 490, 500 (1975).

<sup>85</sup> *Id.* at 498-99 (citing *Baker v. Carr*, 369 U.S. 186, 204 (1962)).

<sup>86</sup> *Maya*, 658 F.3d at 1068; *see* FED. R. CIV. P. 12(b)(1).

not necessary, nor is it proper for purposes of constitutional standing,<sup>87</sup> because *Twombly* and *Iqbal* deal with a “fundamentally different issue.”<sup>88</sup> Thus, the district court improperly assessed the merits of the plaintiffs’ claims, deviating from the proper review for lack of constitutional standing.

#### D. OVERPAYMENT AND RESCISSION

The district court held that plaintiffs’ overpayment and rescission claims were “too speculative to constitute an injury-in-fact” because plaintiffs allegedly may have earned a profit if they had sold their homes later when their property values rise.<sup>89</sup> Further, the district court held that plaintiffs did not establish sufficient causation between defendants’ actions and plaintiffs’ payment of artificially inflated prices.<sup>90</sup> The district court reasoned that the rise in housing prices was a “nationwide phenomenon” that was attributable to other independent variables and, thus, was independent of defendants’ challenged actions.<sup>91</sup>

The Ninth Circuit, however, recognized plaintiffs’ overpayment and rescission claims as actual and concrete economic injuries for constitutional standing purposes.<sup>92</sup> Due to defendants’ concealment of critical information about the housing development and the defendants’ marketing scheme, plaintiffs claimed that they were economically injured when they “paid more for their homes than the homes were worth at the time of the sale.”<sup>93</sup> The Ninth Circuit reasoned that selling their homes for a potential profit in the future would not redress plaintiffs’ economic injury because plaintiffs overpaid for the property at the time of sale.<sup>94</sup> Moreover, plaintiffs argued that they would not have purchased their homes had defendants disclosed their high-risk marketing and financing behavior.<sup>95</sup> Thus, the Ninth Circuit agreed that plaintiffs’ economic injury was a sufficient injury-in-fact for constitutional standing purposes.<sup>96</sup>

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<sup>87</sup> *Id.* (citing *Equity Lifestyle Props., Inc. v. San Luis Obispo*, 548 F.3d 1184, 1189 & n.10 (9th Cir. 2008)).

<sup>88</sup> *Id.*

<sup>89</sup> *Maya v. Centex Corp.*, No. EDCV 09-01671 VAP (OPx), 2010 WL 6843322, at \*8 (C.D. Cal. Mar. 31, 2010), *rev’d*, 658 F.3d 1060 (9th Cir. 2011); *Maya*, 658 F.3d at 1069.

<sup>90</sup> *Maya*, 658 F.3d at 1070.

<sup>91</sup> *Id.* (citing *Maya*, 2010 WL 6843322, at \*11).

<sup>92</sup> *Id.* at 1069 (stating that the Supreme Court and the Ninth Circuit have recognized clear and obvious economic injuries as a sufficient basis for standing).

<sup>93</sup> *Id.*

<sup>94</sup> *Id.*

<sup>95</sup> *Id.*

<sup>96</sup> *Id.* (“This is a quintessential injury-in-fact.”).

Plaintiffs argued that defendants' nondisclosure and intentional concealment of defendants' challenged conduct caused plaintiffs to suffer their alleged economic injuries.<sup>97</sup> Plaintiffs alleged that defendants misrepresented their intention to offer "homes only to people who will occupy them," and rather "sold homes to investors who had no intent to reside in the homes and who were more likely to" abandon their properties when economic adversity arose.<sup>98</sup> Defendants advertised properties to "unqualified buyers"<sup>99</sup> who were financially unable to qualify for traditional prime loans,<sup>100</sup> making them likely recipients of sub-prime loans.<sup>101</sup> Additionally, plaintiffs argued that these "unqualified buyers" were more likely to face foreclosure.<sup>102</sup> Moreover, defendants allegedly "financed at least [sixty-five percent] of the mortgages on homes in [plaintiffs' particular] communities."<sup>103</sup>

The Ninth Circuit interpreted the facts favorably to the plaintiffs, and found that plaintiffs had sufficiently alleged that defendants caused their economic injury of overpayment for constitutional standing purposes, giving plaintiffs the right to pursue these claims against defendants.<sup>104</sup> The court reasoned that defendants were able to manipulate many of the loans' terms to artificially generate demand that would not have occurred but for defendants' extended financing to the majority of buyers, including unqualified buyers, in the plaintiffs' particular neighborhoods.<sup>105</sup> Additionally, since plaintiffs' communities were new developments, the Ninth Circuit had no other independent economic data to compare the neighborhoods' value against.<sup>106</sup> Under the circumstances, the *Maya* court held that plaintiffs can plausibly claim that the defendants' marketing and financial practices created the "artificial demand" that can be attributed to plaintiffs' heightened purchase price for their homes.<sup>107</sup>

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<sup>97</sup> *Id.* at 1065.

<sup>98</sup> *Id.*

<sup>99</sup> *Id.* & n.2 ("Plaintiffs do not explicitly define what they mean by 'unqualified' buyers, but it appears their definition encompasses those with unverified income, poor credit history, or inability to make a down payment of less [sic] than 20% of the home's value.").

<sup>100</sup> Bar-Gill, *supra* note 7, at 1096 & n.72 (2009) (stating that the traditional, prime loan is a relatively simple thirty-year fixed-rate mortgage "for 80 percent, or less, of the home price," requiring an initial down payment of at least 20%).

<sup>101</sup> *Id.* at 1097 & n.75 ("In 2005 and 2006, the median subprime home buyer put no money down, borrowing 100 percent of the purchase price of the house.").

<sup>102</sup> *Maya*, 658 F.3d at 1065.

<sup>103</sup> *Id.* at 1065.

<sup>104</sup> *Id.* at 1070.

<sup>105</sup> *Id.*

<sup>106</sup> *Id.*

<sup>107</sup> *Id.*

The Ninth Circuit found causation between defendants' actions and plaintiffs' rescission claim to be strengthened by defendants' alleged nondisclosure of material information that was closely related to plaintiffs' economic injury.<sup>108</sup> Plaintiffs claimed that they would not have purchased their homes if defendants had properly disclosed their alleged high-risk marketing and financing behavior.<sup>109</sup> Thus, the Ninth Circuit held that plaintiffs had alleged both injury and causation sufficiently for overpayment and rescission claims for purposes of constitutional standing.<sup>110</sup> On remand, the district court will determine whether defendants are actually liable for plaintiffs' overpayment and rescission claims.<sup>111</sup>

#### E. DECREASED VALUE AND DESIRABILITY

In *Maya*, the Ninth Circuit held that the reduced economic value of plaintiffs' homes is a cognizable injury for constitutional standing.<sup>112</sup> The Ninth Circuit cited a number of cases to support its holding on this issue.<sup>113</sup> For instance, in *Barnum Timber Co. v. United States Environmental Protection Agency*, the Ninth Circuit held that a landowner's allegation that his property would lose economic value due to the "EPA's impending classification of a neighboring creek as an impaired water body had established an injury in fact sufficient to withstand a motion to dismiss."<sup>114</sup> Even considering the decline of the national housing market, the court noted that plaintiffs' main argument was that "defendants' acts caused their homes to lose value *above and beyond* those losses caused by general economic conditions."<sup>115</sup>

Further, the Ninth Circuit held that a claim for decreased desirability is an injury-in-fact sufficient for constitutional standing purposes because "the blight resulting from defendants' lending practices [made] their homes less desirable places to live."<sup>116</sup> The Ninth Circuit also cited a number of cases for support of its holding on this issue.<sup>117</sup> For instance, in *City of Sausalito v. O'Neil*, the Ninth Circuit held that "a

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<sup>108</sup> *Id.*

<sup>109</sup> *Id.*

<sup>110</sup> *Id.*

<sup>111</sup> *Id.*

<sup>112</sup> *Id.* at 1070-71 ("A current reduction in the economic value of one's home is a cognizable injury for constitutional standing purposes.").

<sup>113</sup> *Id.*

<sup>114</sup> *Id.* (citing *Barnum Timber v. EPA*, 633 F.3d 894, 898 (9th Cir. 2011)).

<sup>115</sup> *Id.*

<sup>116</sup> *Id.*

<sup>117</sup> *Id.* at 1071-72.

city had constitutional standing to pursue its claim” of decreased desirability because “defendants’ act would result in increased traffic, crowds, decreased attractiveness, and damage to the town’s historical character.”<sup>118</sup>

The Ninth Circuit, however, agreed with the district court’s ruling that plaintiffs did not establish sufficient causation to link defendants’ alleged actions to plaintiffs’ decreased property value and desirability claims.<sup>119</sup> The district court held that plaintiffs lacked sufficient causation for these claims because any alleged loss of property value or desirability can be traced not only to defendants’ actions, “but also [to] the independent actions of others” not involved in the lawsuit.<sup>120</sup> The district court noted specific examples, including “homeowners [and unqualified buyers] in Plaintiffs’ neighborhoods who defaulted on their mortgages and third-party mortgage companies that foreclosed on houses in Plaintiffs’ neighborhoods.”<sup>121</sup> In short, plaintiffs did not show how defendants’ actions caused the inordinate number of foreclosures in plaintiffs’ particular communities because it was other, independent third parties who initiated those foreclosure proceedings—not defendants themselves.<sup>122</sup> Thus, the district court found plaintiffs’ claims to be “necessarily [dependent] upon a causal chain that includes numerous independent forces and individual decisions of” other independent, third parties not involved in the lawsuit.<sup>123</sup>

Despite the lack of causation, the Ninth Circuit permitted the plaintiffs to amend their complaints.<sup>124</sup> The Ninth Circuit noted that it was possible that plaintiffs’ complaints could be saved by amendment because expert testimony could be used to establish the causal effect between defendants’ actions and plaintiffs’ injuries.<sup>125</sup> Furthermore, expert testimony may be used to distinguish the causal effect between defendants’ actions and plaintiffs’ injuries from other independent variables, such as third parties and the general economy.<sup>126</sup> Since “[b]efore the district court, plaintiffs offered to amend and produce an

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<sup>118</sup> *Id.* (citing *City of Sausalito v. O’Neil*, 386 F.3d 1186, 1198-99 (9th Cir. 2004)).

<sup>119</sup> *Id.* at 1072 (“We agree with the district court that plaintiffs have not established how defendants’ actions necessarily result in foreclosure, nor do plaintiffs’ complaints allege that the decreased value is caused by the risk posed by their neighbors (even absent foreclosures).”).

<sup>120</sup> *Maya v. Centex Corp.*, No. EDCV 09-01671 VAP (OPx), 2010 WL 6843322, at \*9 (C.D. Cal. Mar. 31, 2010), *rev’d*, 658 F.3d 1060 (9th Cir. 2011).

<sup>121</sup> *Id.*

<sup>122</sup> *Maya*, 658 F.3d at 1072; *Maya*, 2010 WL 6843322, at \*9.

<sup>123</sup> *Maya*, 2010 WL 6843322, at \*9 (citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992)).

<sup>124</sup> *Maya*, 658 F.3d at 1073.

<sup>125</sup> *Id.* at 1072-73 (citing *Barnum Timber Co. v. EPA*, 633 F.3d 894, 900-01 (9th Cir. 2011)).

<sup>126</sup> *Id.*

expert report distinguishing the effects of defendants' actions from general economic influences," the Ninth Circuit permitted plaintiffs to amend their complaints on remand.<sup>127</sup>

#### F. MAYA'S IMPLICATIONS FOR THE REAL ESTATE FIELD AND HOUSING MARKET

Although *Maya*'s ruling may help numerous similarly situated homeowners seeking redress against developers for speculative injuries that may not be fairly traceable to the developers, *Maya* could be extended to other contexts in which a plaintiff alleges an injury that may not yet have occurred "through a formal economic transaction."<sup>128</sup> With a chance to pursue their claims against defendants and establish causation for decreased value and desirability claims through expert testimony, the plaintiffs' class action suit may reach the trial stage, where a sympathetic jury could find the developers liable.<sup>129</sup> Housing developers throughout California and the rest of the country will be "nervously" following the case's progress on remand.<sup>130</sup>

#### CONCLUSION

The Ninth Circuit's decision in *Maya* could allow numerous homeowners to assert claims against real estate developers for injuries that resulted from third-party foreclosures. As the case illustrates, for purposes of constitutional standing, the decreased value and desirability of a homeowner's property may constitute as an injury-in-fact to invoke the federal jurisdiction for redressability, provided that the homeowner can link his alleged injury causally to a defendant's action. By clarifying the proper standard of review for questions of subject matter jurisdiction and constitutional standing, the Ninth Circuit may have extended liability

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<sup>127</sup> *Id.*

<sup>128</sup> *Maya v. Centex: Lawsuit Alleging High-Risk Loans Diminished Neighborhood Property Values May Proceed*, IMPACT LITIG. J. (Oct. 26, 2011), [www.impactlitigation.com/2011/10/26/maya-v-centex-lawsuit-alleging-high-risk-loans-diminished-neighborhood-property-values-may-proceed](http://www.impactlitigation.com/2011/10/26/maya-v-centex-lawsuit-alleging-high-risk-loans-diminished-neighborhood-property-values-may-proceed).

<sup>129</sup> Roger Bernhardt, *Maya v. Centex Corp.*, Golden Gate Sch. of Law Faculty Scholarship, Paper No. 475 (2011), available at [digitalcommons.law.ggu.edu/cgi/viewcontent.cgi?article=1473&context=pubs](http://digitalcommons.law.ggu.edu/cgi/viewcontent.cgi?article=1473&context=pubs) ("This opinion could act as a warning shot across the bow for many major players in the real estate industry. The plaintiffs should not have too much trouble corroborating their factual allegations or obtaining expert testimony to endorse their theories. If they can get the matter to a sympathetic jury, who knows what could happen?").

<sup>130</sup> Steven G. Lee, *Developers May Be Liable to Homeowners for Marketing to Sub-prime Buyers*, CAL. LITIG. ATTORNEY BLOG (Oct. 19, 2011), [www.rhlaw.com/blog/developers-may-be-liable-to-homeowners-for-marketing-to-sub-prime-buyers](http://www.rhlaw.com/blog/developers-may-be-liable-to-homeowners-for-marketing-to-sub-prime-buyers).

for developers who promise prospective homeowners stable housing developments for speculative injuries that may not be directly traceable to the developers' conduct. *Maya*'s implications may extend nationwide because the plaintiffs' putative class includes homeowners living in new housing developments in dozens of states.<sup>131</sup>

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<sup>131</sup> John Roemer, *Homeowners Get a Boost in Class Action Against Builders*, DAILY J., (Sept. 22, 2011) (defendants "include eight of the nation's largest home developers and their mortgage subsidiaries, including Lennar Corp., Centex Homes, D.R. Horton Inc., Richmond American Homes of California Inc., Beazer Homes USA Inc., Shea Homes Inc., Ryland Homes of California Inc., and Standard Pacific Corp.").