

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

ELAINE CHUNG OLIVER,
Plaintiff,
v.
U.S. BANK NATIONAL
ASSOCIATION, et al.,
Defendants.

Case No. 2:21-cv-07908-FLA (RAOx)

**ORDER DENYING PLAINTIFF’S
MOTION TO REMAND [DKT. 16]
AND GRANTING DEFENDANT’S
MOTION TO DISMISS [DKT. 9]**

RULING

Before the court are two motions: (1) Plaintiff Elaine Chung Oliver’s (“Oliver” or “Plaintiff”) Motion to Remand Pursuant to 28 U.S.C. § 1447 (Dkt. 16, “MTR”); and (2) Defendant U.S. Bank National Association’s (“U.S. Bank” or “Defendant”) Motion to Dismiss Pursuant to Fed. R. Civ. P. 12(b)(6) (Dkt. 9, “MTD”). Both Motions are opposed. Dkts. 19, 28. The parties each filed Requests for Judicial Notice with their briefing. Dkts. 10, 24, 25. Plaintiff opposes Defendant’s Request for Judicial Notice. Dkt. 29. On November 11, 2021, the court found these matters appropriate for resolution without oral argument and vacated the November 19, 2021, hearing date. Dkt. 36; *see* Fed. R. Civ. P. 78(b); Local Rule 7-15.

1 For the reasons stated herein, the court DENIES Plaintiff’s Motion to Remand
2 and GRANTS Defendant’s Motion to Dismiss with 30 days’ leave to amend. The
3 court additionally GRANTS in part Defendant’s Request for Judicial Notice and
4 DENIES Plaintiff’s Requests for Judicial Notice as moot.

5 **BACKGROUND**

6 **I. Plaintiff’s Mortgage and Default**

7 On or about December 20, 2005, Plaintiff obtained a \$416,000 mortgage loan
8 from Downey Savings and Loan Association, F.A., which was secured by a Deed of
9 Trust recorded against real property located at 1133 North Del Sol Lane, Diamond
10 Bar, California 91765 (“Subject Property”). Dkt. 10 (Def. Request for Judicial
11 Notice, “DRJN”), Ex. 1. On or about September 9, 2011, an Assignment of Deed of
12 Trust was recorded memorializing the transfer of Downey’s interest in the Deed of
13 Trust to U.S. Bank. *Id.*, Ex. 2.

14 Plaintiff defaulted on mortgage obligations and a Notice of Default was
15 recorded on March 9, 2012. *Id.*, Ex. 3. A Notice of Trustee’s Sale was recorded on
16 October 20, 2015. *Id.*, Ex. 4. The Subject Property was sold at a public auction on
17 February 23, 2016, and a Trustee’s Deed Upon Sale was recorded on March 7, 2016.
18 *Id.*, Ex. 5.

19 On November 20, 2019, a Grant Deed was recorded conveying title to the
20 Subject Property to the Delsol Trust #1133, Newbridge Investment Group, LLC, as
21 Trustee (“Delsol”). *Id.*, Ex. 6. On February 14, 2020, a Grant Deed was recorded
22 conveying title to the Subject Property from Delsol to Kathy Yang. *Id.*, Ex. 7.

23 **II. Foreclosure Proceedings and Appeal**

24 Appearing pro se, Plaintiff filed her first lawsuit against Defendant U.S. Bank
25 in the Los Angeles County Superior Court on November 16, 2016, asserting numerous
26 causes of action including wrongful foreclosure and quiet title (the “wrongful
27 foreclosure action”). *Id.*, Ex. 8. On May 31, 2017, the state court sustained U.S.
28 Bank’s demurrer to Plaintiff’s operative First Amended Complaint without leave to

1 amend. *Id.*, Ex. 9. Judgment was entered in U.S. Bank’s favor on June 15, 2017. *Id.*,
2 Ex. 10.

3 Plaintiff filed a motion to vacate the judgment on July 26, 2017. DRJN, Ex. 11.
4 It was denied on August 29, 2017. *Id.*, Ex. 12. Plaintiff filed a second motion to
5 vacate the judgment on August 29, 2017. *Id.*, Ex. 13. Plaintiff’s second motion was
6 denied on October 17, 2017. *Id.*, Ex. 14.

7 Plaintiff appealed the judgment on November 21, 2017. *Id.*, Ex. 15. The
8 appeal was dismissed by the California Court of Appeal as untimely. *Id.*, Ex. 16.
9 Plaintiff filed a third motion to vacate the judgment on April 17, 2018. *Id.*, Ex. 17.
10 Plaintiff’s third motion was denied on May 17, 2018. *Id.*, Ex. 18.

11 On January 13, 2017, U.S. Bank filed a verified complaint alleging Unlawful
12 Detainer (“UD”) in the Los Angeles County Superior Court against Plaintiff and her
13 husband, Kenneth Oliver. *Id.*, Ex. 19. Judgment was entered in U.S. Bank’s favor on
14 August 22, 2018. *Id.*, Ex. 20. Plaintiff was evicted pursuant to a Writ of Possession
15 in December 2018. Dkt. 1-1 (“Compl.”), ¶ 2.

16 Plaintiff appealed the UD judgment, and on December 12, 2019, the Appellate
17 Division of the Los Angeles County Superior Court reversed, holding that the trial
18 court’s findings that U.S. Bank acquired title to the Subject Property were not
19 supported by substantial evidence. Compl., Ex. A at 4-5. The appellate division court
20 agreed with Plaintiff’s contention that the “presentation of the trustee’s deed upon
21 sale, on its own, did not constitute sufficient proof that U.S. Bank acquired the
22 property at a regularly conducted foreclosure sale.” *Id.* at 1. As the appellate division
23 court explained,

24 The record in the case ...at bar contain[ed] minimal evidence that
25 U.S. Bank acquired title to the subject property pursuant to a valid
26 foreclosure sale. ... [T]he deed of trust was not introduced as an
27 exhibit below and is not included in the appellate record. Without
28 the deed of trust, a properly authenticated declaration, or relevant
testimony from a person with knowledge of the chain of title, we

1 have no ability to determine whether The Wolf Firm possessed the
2 power to sell the property as the original or successor trustee.

3 *Id.* at 5-6. The appellate division court declined to address Plaintiff’s remaining
4 arguments. *Id.* at 7 n. 6.

5 The UD action was dismissed on April 7, 2020, without prejudice. DRJN, Ex.
6 21. Following Remittitur, Plaintiff filed a Motion for Restitution of Property,
7 requesting “full restitution of her property in the amount of \$47,300 plus the loss of
8 her Property.... Plaintiff requests that the court schedule an evidentiary hearing to
9 determine a full amount [U.S. Bank] owes to [Plaintiff].” *Id.*, Ex. 22 at 10. On
10 August 11, 2020, the state court denied Plaintiff’s Motion for Restitution of Property.
11 *Id.*, Ex. 23.

12 **III. The Current Action**

13 Plaintiff filed the Complaint in this action on August 26, 2021, in the Los
14 Angeles County Superior Court. Compl. The Complaint alleges two causes of action
15 based on a wrongful eviction claim of forcible entry and forcible detainer. *Id.* On
16 October 4, 2021, Defendant removed the action to this court. Dkt. 1. In its Notice of
17 Removal, Defendant alleges the court has subject matter jurisdiction pursuant to 28
18 U.S.C. § 1332(a), because the amount in controversy exceeds \$75,000 and complete
19 diversity exists between the parties. *Id.* at 2-3. Specifically, Defendant asserts
20 Plaintiff is a resident and citizen of California, while Defendant is a citizen of Ohio,
21 where its main office is located. *Id.* ¶¶ 6-7. Based on Plaintiff’s Complaint,
22 Defendant further asserts the amount in controversy exceeds the statutory minimum,
23 as Plaintiff seeks at least \$750,000 for mental distress, discomfort, and annoyance. *Id.*
24 ¶ 9.

25 In the Complaint, Plaintiff alleges Defendant unlawfully foreclosed on the
26 Subject Property, because Defendant “was not the ‘foreclosing beneficiary’ of the
27 Subject Property on February 23, 2016 as alleged on the Trustee’s Deed Upon Sale ...
28 and was not entitled to possession because title was not ‘duly perfected....’” Compl. ¶

1 2. Plaintiff contends that “[a]fter being denied Appellate Review of the denial of the
2 motion for restitution[,] Plaintiff is now forced to file this separate action against
3 Defendants.” *Id.* ¶ 4. Plaintiff seeks, inter alia, possession of the Subject Property or
4 a monetary award, \$750,000, “for Plaintiff’s mental distress, discomfort, and
5 annoyance,” statutory damages, reasonable attorney’s fees, and costs. *Id.* at Prayer.

6 DISCUSSION

7 **I. Requests for Judicial Notice**

8 **A. Legal Standard**

9 Judicial notice allows courts to consider a fact that is not subject to reasonable
10 dispute because it is generally known within the territory or can be determined from
11 sources of unquestionable accuracy. Fed. R. Evid. 201. A court may take judicial
12 notice of court filings and other matters of public record. *Fowler Packing Co., Inc. v.*
13 *Lanier*, 844 F.3d 809, 813 n. 2 (9th Cir. 2016) (taking judicial notice of the fact a
14 related case was filed and of the claim alleged); *Harris v. County of Orange*, 682 F.3d
15 1126, 1132 (9th Cir. 2012) (a court may take judicial notice of “undisputed matters of
16 public record”); *Reyn’s Pasta Bella, LLC v. Visa USA, Inc.*, 442 F.3d 741, 746 n. 6
17 (9th Cir. 2006) (taking judicial notice of pleadings, memoranda, and other court
18 filings); *see also United States v. Black*, 482 F.3d 1035, 1041 (9th Cir. 2007) (judicial
19 notice of proceedings in other courts is proper “if those proceedings have a direct
20 relation to matters at issue.”). However, a court cannot take judicial notice of
21 reasonably disputed facts contained in such public records. *Khoja v. Orexigen*
22 *Therapeutics, Inc.*, 899 F.3d 988, 999 (9th Cir. 2018).

23 **B. Analysis**

24 The parties filed Requests for Judicial Notice in support of their Motions. Dkts.
25 10, 24, 25. Defendant requests the court take judicial notice of 23 exhibits: Exhibits 1
26 through 7 are documents recorded in the Los Angeles County Recorder’s Office; and
27
28

1 Exhibits 8 through 23¹ are state court documents from prior proceedings between the
2 same parties relating to the same Subject Property. Dkt. 10. Plaintiff opposes
3 Defendant’s Request for Judicial Notice, arguing that these documents are not relevant
4 to the current proceeding and that the court may not judicially notice disputed facts
5 within these documents to find Defendant was entitled to enforce the power of sale
6 contained in the Deed of Trust. Dkt. 29 at 6.

7 All of these documents are either title instruments recorded in a County
8 Recorder’s Office or court filings, the existence of which “can be accurately and
9 readily determined from sources whose accuracy cannot reasonably be questioned.”
10 *See* Fed. R. Evid. 201(b)(2). As stated, courts have regularly found that such public
11 records and court filings can be judicially noticed. Further, the prior state court
12 proceedings have a direct relation to matters at issue. *See Black*, 482 F.3d at 1041.

13 The court, therefore, GRANTS Defendant’s request and takes judicial notice of
14 the existence and legal effect of these documents, and the fact that they are public
15 records or were filed in prior state court proceedings. The court does not take judicial
16 notice of reasonably disputed facts stated therein.

17 Plaintiff requests the court take judicial notice of the December 12, 2019,
18 Opinion from the Appellate Division of the Los Angeles County Superior Court.
19 Dkts. 24, 25. This document was included within the scope of Defendant’s Request
20 for Judicial Notice and attached as Exhibit A to Plaintiff’s Complaint. Dkt. 10, Ex.
21 22; Compl. ¶ 21, Ex. A. Having taken judicial notice of the existence of this
22 document, the court DENIES Plaintiff’s Requests for Judicial Notice as moot.

23 ///

24 ///

25 ///

27 ¹ Exhibit 22 appears to include pages regarding an unrelated state court case. *See*
28 DRJN, Ex. 22 at 23-24. The court DENIES Defendant’s request as to these pages.

1 **II. Motion to Remand**

2 **A. Legal Standard**

3 “Federal courts are courts of limited jurisdiction, possessing only that power
4 authorized by Constitution and statute.” *Gunn v. Minton*, 568 U.S. 251, 256 (2013)
5 (quotations omitted). Pursuant to 28 U.S.C. § 1441(a), a defendant may remove a
6 civil action filed in state court to federal court only where the district court would
7 have original jurisdiction. *Caterpillar, Inc. v. Williams*, 482 U.S. 386, 392 (1987).
8 Under 28 U.S.C. § 1332, a district court has original jurisdiction over a civil action
9 where (1) the amount in controversy exceeds the sum or value of \$75,000, exclusive
10 of interest and costs, and (2) the dispute is between “citizens of different States.”

11 In assessing whether removal from state court was proper, the court looks to the
12 pleadings at the time of removal rather than any amendment to the pleadings post-
13 removal. *See Broadway Grill, Inc. v. Visa Inc.*, 856 F.3d 1274, 1277 (9th Cir. 2017)
14 (“the circuits have unanimously and repeatedly held that whether remand is proper
15 must be ascertained on the basis of the pleadings at the time of removal”). When a
16 complaint filed in state court alleges on its face “damages in excess of the required
17 jurisdictional minimum,” the amount pleaded controls unless it appears “to a legal
18 certainty” that the claim is for less than the jurisdictional amount. *Sanchez v.*
19 *Monumental Life Ins. Co.*, 102 F.3d 398, 402 (9th Cir. 1996). Accordingly, in
20 assessing the amount in controversy, a court must “assume that the allegations of the
21 complaint are true and assume that a jury will return a verdict for the plaintiff on all
22 claims made in the complaint.” *Kenneth Rothschild Tr. v. Morgan Stanley Dean*
23 *Witter*, 199 F. Supp. 2d 993, 1001 (C.D. Cal. 2002) (quotations omitted).

24 **B. Analysis**

25 In the Motion to Remand, Plaintiff argues Defendant’s removal was improper
26 because no federal question was raised or implicated in the Complaint. MTR at 3-6.
27 Plaintiff alleges that “pursuant to 28 U.S.C. § 1441(c), a removal cannot rely on
28 diversity and removal is not authorized.” *Id.* at 3. However, 28 U.S.C. § 1441(c)

1 governs the joinder of federal law claims and claims that are “not within the original
2 or supplemental jurisdiction of the district court or a claim that has been made
3 nonremovable by statute.” It does not apply here, as Plaintiff’s Complaint raises only
4 state law claims. *See Johnson v. Caliber Home Loans, Inc.*, No. 5:19-cv-01387-PA
5 (GJSx), 2019 WL 4393355, at *5 (C.D. Cal. Sept. 6, 2019).

6 Defendant removed this case pursuant to 28 U.S.C. § 1441(b), which concerns
7 removal based on diversity of citizenship. If 28 U.S.C. § 1441(b) is satisfied, federal
8 question is not necessary. *See Caterpillar*, 482 U.S. at 392 (“Absent diversity of
9 citizenship, federal-question jurisdiction is required.”) (emphasis added). Under §
10 1441(b), Defendant need only show the dispute is between citizens of different states,
11 and the amount in controversy exceeds \$75,000. *See* 28 U.S.C. § 1332.

12 Plaintiff does not dispute she and Defendant are citizens of different states.
13 Dkt. 26 at 2. This is sufficient to establish diversity of citizenship pursuant to 28
14 U.S.C. § 1332. *See Ehrman v. Cox Commc’ns, Inc.*, 932 F.3d 1223, 1228 (9th Cir.
15 2019) (“when a defendant’s allegations of citizenship are unchallenged, nothing more
16 is required”).

17 On Reply, Plaintiff raises a new argument that Defendant has not met its burden
18 of proving by a preponderance of evidence the amount in controversy exceeds the
19 jurisdictional amount of \$75,000. Dkt. 26. Plaintiff asserts “the amount in
20 controversy does not appear on the face of the underlying complaint.” *Id.* at 3-4. The
21 court disagrees, as Plaintiff clearly seeks more than \$75,000 in damages in the
22 Complaint. Compl., ¶ 16 (“As a proximate result of Defendants’ acts, Plaintiff has
23 suffered mental distress, discomfort, and annoyance to her damage in the amount of
24 \$750,000.00.”), Prayer ¶ 1 (requesting “possession of the premises or in the
25 alternative a monetary award”), ¶ 2(c) (requesting damages of “\$750,000.00 for
26 Plaintiff’s mental distress, discomfort, and annoyance”).

27 This court has diversity jurisdiction pursuant to 28 U.S.C. § 1332. Accordingly,
28 the court DENIES Plaintiff’s Motion to Remand.

1 **III. Motion to Dismiss**

2 **A. Legal Standard**

3 Under Fed. R. Civ. P. 12(b)(6) (“Rule 12(b)(6)”), a party may file a motion to
4 dismiss a complaint for “failure to state a claim upon which relief can be
5 granted.” The purpose of Rule 12(b)(6) is to enable defendants to challenge the legal
6 sufficiency of claims asserted in a complaint. *Rutman Wine Co. v. E. & J. Gallo*
7 *Winery*, 829 F.2d 729, 738 (9th Cir. 1987). A district court properly dismisses a
8 claim under Rule 12(b)(6) if the complaint fails to allege sufficient facts “to state a
9 cognizable legal theory.” *Caltex Plastics, Inc. v. Lockheed Martin Corp.*, 824 F.3d
10 1156, 1159 (9th Cir. 2016).

11 “To survive a motion to dismiss, a complaint must contain sufficient factual
12 matter ... to ‘state a claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*,
13 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570
14 (2007)). “While a complaint attacked by a Rule 12(b)(6) motion to dismiss does not
15 need detailed factual allegations, a plaintiff’s obligation to provide the ‘grounds’ of
16 his ‘entitlement to relief’ requires more than labels and conclusions, and a formulaic
17 recitation of the elements of a cause of action will not do.” *Twombly*, 550 U.S. at 555
18 (internal citation omitted). “Factual allegations must be enough to raise a right to
19 relief above the speculative level.” *Id.*

20 When evaluating a complaint under Rule 12(b)(6), the court “must accept all
21 well-pleaded material facts as true and draw all reasonable inferences in favor of the
22 plaintiff.” *Caltex Plastics, Inc.*, 824 F.3d at 1159. Legal conclusions, however, “are
23 not entitled to the assumption of truth” and “must be supported by factual
24 allegations.” *Iqbal*, 556 U.S. at 679. A court must normally convert a Rule 12(b)(6)
25 motion into a Rule 56 motion for summary judgment if it considers evidence outside
26 the pleadings. *United States v. Ritchie*, 342 F.3d 903, 907-08 (9th Cir. 2003). “A
27 court may, however, consider certain materials—documents attached to the complaint,
28 documents incorporated by reference in the complaint, or matters of judicial notice—

1 without converting the motion to dismiss into a motion for summary judgment.” *Id.* at
2 908.

3 When granting a motion to dismiss, leave to amend should be provided unless it
4 is clear the complaint could not be saved by any amendment. *Manzarek v. St. Paul*
5 *Fire & Marine Ins. Co.*, 519 F.3d 1025, 1031 (9th Cir. 2008) (“Dismissal without
6 leave to amend is improper unless it is clear, upon de novo review, that the complaint
7 could not be saved by any amendment.”). Leave to amend “is properly denied ... if
8 amendment would be futile.” *Carrico v. City & County of San Francisco*, 656 F.3d
9 1002, 1008 (9th Cir. 2011).

10 **B. Claim Preclusion and Issue Preclusion**

11 A Motion to Dismiss for failure to state a claim pursuant to Rule 12(b)(6) can
12 be based on res judicata. *See Goldberg v. Cameron*, 694 Fed. App’x. 564, 566 (9th
13 Cir. 2017). “A federal court sitting in diversity must apply the res judicata law of the
14 state in which it sits.” *Costantini v. Trans World Airlines*, 681 F.2d 1199, 1201 (9th
15 Cir. 1982). Because this action was removed from California state court, California
16 state law regarding res judicata applies. *MHC Fin. L.P. v. City of San Rafael*, 714
17 F.3d 1118, 1125 (9th Cir. 2013).

18 Under California law, res judicata is an “umbrella term encompassing both
19 claim preclusion and issue preclusion,” which the California Supreme Court has
20 described as “two separate ‘aspects’ of an overarching doctrine.” *DKN Holdings LLC*
21 *v. Faerber*, 61 Cal. 4th 813, 823 (2015).

22 Claim preclusion is the primary aspect of res judicata and bars claims that were,
23 or should have been, advanced in a previous suit involving the same parties. *Id.*
24 Specifically, claim preclusion “prevents relitigation of the same cause of action in a
25 second suit between the same parties or parties in privity with them” and “arises if a
26 second suit involves: (1) the same cause of action (2) between the same parties (3)
27 after a final judgment on the merits in the first suit.” *Id.* at 824.

28 Issue preclusion, also known as collateral estoppel, is the secondary aspect of

1 res judicata and bars issues that were argued and decided in a previous suit. *Id.* Issue
2 preclusion “prohibits the relitigation of issues argued and decided in a previous case,
3 even if the second suit raises different causes of action” and “applies: (1) after final
4 adjudication (2) of an identical issue (3) actually litigated and necessarily decided in
5 the first suit and (4) asserted against one who was a party in the first suit or one in
6 privity with that party.” *Id.* at 825.

7 “To determine whether two proceedings involve identical causes of action for
8 purposes of claim preclusion, California courts have ‘consistently applied the ‘primary
9 rights’ theory.’” *Boeken v. Philip Morris USA, Inc.*, 48 Cal. 4th 788, 797 (2010). “In
10 California the phrase ‘causes of action’ is often used indiscriminately ... to mean
11 counts which state [according to different legal theories] the same cause of action.”
12 *Id.* at 798 (quotations omitted). “But for purposes of applying the doctrine of res
13 judicata, the phrase ‘cause of action’ has a more precise meaning: The cause of action
14 is the right to obtain redress for a harm suffered, regardless of the specific remedy
15 sought or the legal theory (common law or statutory) advanced.” *Id.* “Even where
16 there are multiple legal theories upon which recovery might be predicated, one injury
17 gives rise to only one claim for relief. Hence a judgment for the defendant is a bar to
18 a subsequent action by the plaintiff based on the same injury to the same right, even
19 though he presents a different legal ground for relief.” *Id.* (quotations and citation
20 omitted). “When two actions involving the same parties seek compensation for the
21 same harm, they generally involve the same primary right.” *Id.*

22 In the Complaint, Plaintiff alleges Defendant took possession of and sold the
23 Subject Property without Plaintiff’s consent or legal authorization to conduct the sale.
24 Plaintiff’s claims, here, are based on and seek redress for the same injuries to the same
25 primary rights as the prior wrongful foreclosure litigation: her claimed right to possess
26 the Subject Property and have a court determine the validity of Defendant U.S. Bank’s
27 right, title, or interest in the Subject Property. Plaintiff’s request for restitution in the
28 form of possession or monetary damages for the value of the Subject Property, Compl.

1 at Prayer ¶ 1, is the same relief she sought in the wrongful foreclosure action and was
2 denied. DRJN, Ex. 8 at Prayer ¶¶ 1-3, Ex. 9 at 2 (sustaining Defendant’s demurrer);
3 Ex. 16 (dismissing appeal). While Plaintiff identified her claims as “causes of action”
4 for forcible entry and forcible detainer in the Complaint, Plaintiff’s allegations focus
5 solely on the alleged wrongful foreclosure previously litigated. *See* Compl.
6 Therefore, Plaintiff’s “causes of action” asserted, regarding her claimed right to title
7 and possession of the Subject Property, were either raised, or should have been raised
8 in the previous state court actions between the same parties. *See DKN Holdings*, 61
9 Cal. 4th at 818. In fact, Plaintiff admits she filed this Complaint because her relief
10 sought was previously denied: “After being denied Appellate Review of the denial of
11 the motion for restitution[,] Plaintiff is now forced to file this separate action against
12 Defendants.” Compl. ¶ 4. Plaintiff’s claims, as currently pleaded, appear to be an
13 attempt to relitigate the same issues previously decided and denied on the merits by
14 the Los Angeles County Superior Court.

15 Courts have found that a litigant’s claims are barred by res judicata where they
16 challenge an alleged wrongful foreclosure in multiple lawsuits. *See Johnson*, 2019
17 WL 4393355, at *6 (collecting cases). Similarly, the court finds Plaintiff’s pleaded
18 claims and request for restitution in the form of possession of or monetary
19 compensation for the Subject Property are barred by res judicata. *See DKN Holdings*,
20 61 Cal. 4th at 818.

21 Plaintiff contends she is entitled to restitution because the Appellate Division of
22 the Los Angeles County Superior Court reversed the judgment in favor of Defendant
23 on appeal. Dkt. 28 at 3. The appellate division court, however, reversed only the
24 judgment of eviction, after finding Defendant did not present sufficient evidence
25 during trial of the UD action to support Plaintiff’s eviction from the Subject Property.
26 Dkt. 10, Ex. 22 at 6-7. The appellate division court declined to consider whether
27 Defendant held title to the Subject Property, finding that issue unnecessary in light of
28 its determination that the judgment of eviction was not supported by substantial

1 evidence. *See id.* at 7 n. 6. Plaintiff’s argument that she is entitled to title of the
2 Subject Property as the prevailing party in the appeal, thus, fails. As stated, Plaintiff’s
3 claims for restitution in the form of title to and possession of the Subject Property are
4 barred by res judicata.

5 To the extent Plaintiff intends to seek redress for injuries of forcible entry or
6 forcible detainer based on the appellate division court’s determination that the eviction
7 was improper, Plaintiff must allege sufficient facts to state a cognizable legal theory
8 for each claim. *See Caltex Plastics, Inc.*, 824 F.3d at 1159.

9 Pursuant to California Code of Civil Procedure § 1159(a) (“Section 1159(a)”),

10 Every person is guilty of a forcible entry who either:

- 11 (1) By breaking open doors, windows, or other parts of a house, or by
12 any kind of violence or circumstance of terror enters upon or into
13 any real property; [or]
14 (2) Who, after entering peaceably upon real property, turns out by
15 force, threats, or menacing conduct, the party in possession.”

16 “For purposes of this section, ‘party in possession’ means any person who hires real
17 property and includes a boarder or lodger, except those persons whose occupancy is
18 described in subdivision (b) of Section 1940 of the [California] Civil Code.” *Id.*
19 § 1159(b).

20 Pursuant to California Code of Civil Procedure § 1160(a) (“Section 1160(a)”),

21 Every person is guilty of a forcible detainer who either:

- 22 (1) By force, or by menaces and threats of violence, unlawfully holds
23 and keeps the possession of any real property, whether the same
24 was acquired peaceably or otherwise; [or]
25 (2) Who, in the night-time, or during the absence of the occupant of
26 any lands, unlawfully enters upon real property, and who, after
27 demand made for the surrender thereof, for the period of five
28 days, refuses to surrender the same to such former occupant.

“The occupant of real property, within the meaning of this section is one who, within
five days preceding such unlawful entry, was in the peaceable and undisturbed
possession of such lands.” *Id.* § 1160(b).

1 Plaintiff has not alleged sufficient facts to plead a claim of forcible entry or
2 forcible detainer under Sections 1159(a) and 1160(a). The court, therefore, GRANTS
3 Plaintiff leave to amend to allow Plaintiff the opportunity to plead claims related to
4 her eviction only. Plaintiff is DENIED leave to amend with respect to her claims for
5 title to and possession of the Subject Property.

6 **CONCLUSION**

7 For the reasons stated above, the court DENIES Plaintiff’s Motion to Remand
8 (Dkt. 16), and GRANTS Defendant’s Motion to Dismiss (Dkt. 9) with 30 days’ leave
9 to amend. Failure to amend timely may result in dismissal of the action. The court
10 additionally GRANTS in part Defendant’s Request for Judicial Notice (Dkt. 10), and
11 DENIES AS MOOT Plaintiff’s Request for Judicial Notice (Dkts. 24, 25).

12
13 IT IS SO ORDERED.

14
15 Dated: February 15, 2023



16
17 FERNANDO L. AENLLE-ROCHA
18 United States District Judge
19
20
21
22
23
24
25
26
27
28