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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
10

11 LISA GOLDEN

12 Plaintiff,

13 v.

14 RICHARD KIPPERMAN, DAVID
15 ORTIZ, and TIFFANY CARROLL

16 Defendants.

Case No.: 20-cv-855 DMS (AGS)

**ORDER GRANTING DEFENDANTS'
MOTIONS TO DISMISS**

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18 Pending before the Court are Defendants' Motions to Dismiss. (ECF No. 10, 14.)
19 Plaintiff did not file a response in opposition. For the following reasons, the motions are
20 granted.
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22 **I.**

BACKGROUND

23 On November 15, 2017, Plaintiff Lisa Golden ("Plaintiff") filed a voluntary petition
24 for relief under Chapter 7 of the United States Bankruptcy Code in the United States
25 Bankruptcy Court for the Southern District of California. *See* No.17-06928-MM7 (Bankr.
26 S.D. Cal. 2017). Defendant Richard Kipperman was thereafter appointed the Chapter 7
27 Trustee for Plaintiff's bankruptcy case, and he currently continues to serve in that capacity.
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1 (Kipperman Mot. to Dis., ECF No. 10, at 1.) Defendants David Ortiz and Tiffany Carroll
2 are employees of the Office of the United States Trustee. (Compl. at 4.) The Office of the
3 United States Trustee supervises the administration of cases and trustees in bankruptcy
4 cases commenced under Chapter 7, 11, and 13 of the Bankruptcy Code. *See* 28 U.S.C. §
5 586(a)(3). One of the primary functions of the United States trustee is to maintain and
6 supervise a panel of private trustees, *see* 28 U.S.C. § 586(a)(1), but they may serve and
7 perform the duties of a private trustee under certain circumstances. *See* 28 U.S.C. §
8 586(a)(2).

9 On May 6, 2020, Plaintiff filed the present *Bivens* claim, alleging that Defendants
10 violated her Due Process and “Equal Access” rights and engaged in gender discrimination.
11 (*Id.* at 3-4.) Specifically, Plaintiff contends Defendant Kipperman “illegally seized assets
12 including real property and deprived [her] and [her] settled trust of [her] rights to these
13 assets,” “used gender discrimination to deprive [her]” of her assets, and “took numerous
14 actions to deprive [her] of equal access to the litigation / defense of these assets.” (*Id.* at
15 4.) Plaintiff alleges Defendant Tiffany Carroll “personally assisted in the deprivation of
16 these assets and was responsible for hiring and supervising Richard Kipperman[] and
17 David Ortiz.” (*Id.* at 5.) Defendants’ alleged acts occurred during the “administ[rati]on
18 of [Plaintiff’s] bankruptcy estate in the United States Bankruptcy Court,” and Plaintiff
19 sued each Defendant for acts undertaken in their official capacity. (*See id.* at 2-4.)
20 Defendants now move to dismiss Plaintiff’s complaint. (ECF No. 10, 14.) For the
21 following reasons, Defendants’ motions are granted.

22 II.

23 LEGAL STANDARD

24 Federal Rule of Civil Procedure 8(a) requires a plaintiff to plead a claim with enough
25 specificity to “give the defendant fair notice of what the . . . claim is and the grounds upon
26 which it rests.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 545 (2007) (internal quotation
27 marks omitted). A motion to dismiss under Federal Rule of Civil Procedure 12(b)(6) tests
28 the legal sufficiency of the claims asserted in the complaint. Fed. R. Civ. P. 12(b)(6);

1 *Navarro v. Block*, 250 F.3d 729, 731 (9th Cir. 2001). In deciding a motion to dismiss, all
2 material factual allegations of the complaint are accepted as true, as well as all reasonable
3 inferences to be drawn from them, *Cahill v. Liberty Mut. Ins. Co.*, 80 F.3d 336, 338 (9th
4 Cir. 1996), but a court need not accept all conclusory allegations as true. *Holden v.*
5 *Hagopian*, 978 F.2d 1115, 1121 (9th Cir. 1992) (citation omitted). A motion to dismiss
6 should be granted if a plaintiff’s complaint fails to contain “enough facts to state a claim
7 to relief that is plausible.” *Twombly*, 550 U.S. at 544.

8 A complaint can also be dismissed for lack of subject matter jurisdiction. *See* Fed.
9 R. Civ. P. 12(h)(3) (“If the court determines at any time that it lacks subject-matter
10 jurisdiction, the court must dismiss the action.”). “It is a fundamental principle that federal
11 courts are courts of limited jurisdiction.” *Owen Equip. & Erection Co. v. Kroger*, 437 U.S.
12 365, 374 (1978). “A federal court is presumed to lack jurisdiction in a particular case
13 unless the contrary affirmatively appears.” *Stock West, Inc. v. Confederated Tribes of the*
14 *Colville Reservation*, 873 F. 2d 1221, 1225 (9th Cir. 1989) (internal citations omitted). The
15 party asserting subject matter jurisdiction has the burden of establishing it. *Kokkonen v.*
16 *Guardian Life Ins. Co.*, 511 U.S. 375, 377 (1994).

17 II.

18 DISCUSSION

19 Defendants first move to dismiss Plaintiff’s complaint for lack of subject matter
20 jurisdiction because of the *Barton* doctrine and the doctrine of sovereign immunity.
21 Defendants also move to dismiss Plaintiff’s complaint for failure to state a claim because
22 they are entitled to quasi-judicial immunity for actions undertaken in their official capacity.
23 Each argument will be addressed in turn.

24 A. Barton Doctrine

25 First, Defendants allege the Court lacks jurisdiction over Plaintiff’s claims against
26 them because of the *Barton* doctrine. (Kipperman Mot. at 1; Carroll and Ortiz Mot. to Dis.,
27 ECF No. 14., at 5.) As applied in the Ninth Circuit, “the *Barton* doctrine requires ‘that a
28 party must first obtain leave of the bankruptcy court before it initiates an action *in another*

1 *forum* against a bankruptcy trustee or other officer appointed by the bankruptcy court for
2 acts done in the officer’s official capacity.” *In re Harris*, 590 F.3d 730, 741 (9th Cir. 2009)
3 (quoting *In re Crown Vantage, Inc.*, 421 F.3d 963, 970 (9th Cir. 2005)) (emphasis in
4 original). Absent leave from the court that appointed the trustee, the other forum “lacks
5 subject matter jurisdiction over the suit.” *Id.* Because Plaintiff sued Defendants pursuant
6 to acts taken in their official capacity, (Compl. at 2), and did not seek leave of the
7 bankruptcy court (the appointing court), this Court lacks jurisdiction over her claims.¹ *In*
8 *re Harris*, 590 F. 3d at 742. (“[a] court *other than* the appointing court has no jurisdiction
9 to entertain an action against the trustee for acts within the trustee’s authority as an officer
10 of the court without leave of the appointing court.”) (emphasis and alterations in original)
11 (internal quotation marks and citations omitted).

12 B. Sovereign Immunity

13 Next, Defendants contend the Court lacks subject matter jurisdiction because this
14 suit is barred by sovereign immunity. (Carroll and Ortiz Mot. at 5.) The United States, as
15 a sovereign, is immune from a suit unless it has waived its immunity. *See Dep’t of Army*
16 *v. Blue Fox, Inc.*, 525 U.S. 255, 260 (1999). “A court lacks subject matter jurisdiction over
17 a claim against the United States if it has not consented to be sued on that claim.” *Balser*
18 *v. Dep’t of Justice, Office of U.S. Trustee*, 327 F.3d 903, 910 (9th Cir. 2003). “When the
19 United States consents to be sued, the terms of its waiver of sovereign immunity define the
20 extent of the court’s jurisdiction.” *U.S. v. Mottaz*, 476 U.S. 834, 841 (1986) (citing *U.S. v.*
21 *Sherwood*, 312 U.S. 584, 586 (1941)).

22 In *Balser v. Department of Justice, Office of U.S. Trustee*, the Ninth Circuit held that
23 a suit against the Office of the United States Trustee is a suit against the United States. *See*
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25
26 ¹Although the Court lacks jurisdiction based on the *Barton* doctrine, pro se pleadings must
27 be construed liberally. *See Draper v. Rosario*, 836 F.3d 1072, 1080 (9th Cir. 2016)
28 (internal citations omitted). Accordingly, the Court will address Defendants’ other
arguments.

1 *Balser*, 327 F.3d at 907. Here, Plaintiff sued all three Defendants in their “official
2 capacity.” (See Compl at 2-3.) When analyzing sovereign immunity, any lawsuit against
3 an agency of the United States or against an officer of the United States in his or her official
4 capacity is considered an action against the United States. See *Sierra Club v. Whitman*,
5 268 F.3d 898, 901 (9th Cir. 2001). Accordingly, Plaintiff’s claims must be considered as
6 an action against the United States. As such, Plaintiff’s claims are barred by sovereign
7 immunity.

8 Furthermore, Plaintiff brought her claims as a *Bivens* action. (See Compl. at 3.). To
9 the extent that Plaintiff assert a *Bivens* action, “[her] claim does not abridge sovereign
10 immunity because a *Bivens* suit is against a federal employee ‘in his individual rather than
11 official capacity.’” *Balser*, 327 F.3d at 909 (9th Cir. 2003) (citing *Holloman v. Watt*, 708
12 F.2d 1399, 1401 (9th Cir. 1983)). “The existence of a *Bivens* claim ... does not state a
13 viable cause of action against the United States trustee acting in his official capacity.” *Id.*;
14 see also *Consejo de Desarrollo Economico de Mexicali, A.C. v. United States*, 482 F.3d
15 1157, 1172 (9th Cir. 2007) (“[A] *Bivens* action can be maintained against a defendant in
16 his or her individual capacity only, and not in his or her official capacity.”) (alteration in
17 original) (internal quotation marks and citations omitted). Here, Plaintiff sued each of the
18 Defendants in their official capacity, and as such, her complaint is “merely...another way
19 of pleading an action against the United States, which would be barred by the doctrine of
20 sovereign immunity.” See *Consejo de Desarrollo Economico de Mexicali, A.C.*, 482 F.3d
21 at 1172. Plaintiff “does not claim damages based on the past unconstitutional acts of
22 Federal officials in their individual capacities,” therefore the Court lacks “subject matter
23 jurisdiction over the claim because the United States has not consented to its officials being
24 sued in their official capacities.” See *id.*

25 C. Quasi-Judicial Immunity

26 Defendants also contend they are subject to quasi-judicial immunity from liability
27 for acts taken within the scope of their authority. (Kipperman Mot. at 2; Carroll and Ortiz
28 Mot. to Dis., ECF No. 14, at 3–4.) “Bankruptcy trustees are entitled to broad immunity

1 from suit when acting within the scope of their authority and pursuant to court order.”
2 *Bennett v. Williams*, 892 F.2d 822, 823 (9th Cir. 1989). “[C]ourt appointed officers who
3 represent the estate are the functional equivalent of a trustee.” *In re Harris*, 590 F.3d at
4 742. Because trustees “[perform] many of the functions that had been assigned previously
5 to the bankruptcy judge,” they are eligible for derived quasi judicial-immunity. *See Balser*,
6 326 F.3d at 910 (“In light of the fact that United States trustees assume the judicial
7 functions historically vested in bankruptcy and district courts, the actions of the United
8 States trustees logically must be cloaked in the same immunity.”)

9 All Defendants here are bankruptcy trustees and are therefore eligible for derived
10 quasi-judicial immunity. To qualify for quasi-judicial immunity, the trustee must establish:
11 “(1) their acts were within the scope of their authority; (2) the debtor had notice of their
12 proposed acts; (3) they candidly disclosed their proposed acts to the bankruptcy court; and
13 (4) the bankruptcy court approved their acts.” *In re Harris*, 590 F.3d at 742.

14 Here, Plaintiff alleges that Defendant Kipperman “illegally seized assets including
15 real property and deprived [her] and [her] settled trust of [her] rights to these assets.”
16 (Compl. at 4.) Plaintiff is clear in her complaint, however, that her allegations arise out of
17 the bankruptcy court proceedings: “instead of administering the estate, Richard Kipperman
18 set upon a course of illegally seizing assets in collusion with his personal friend and
19 professional peer Judge Margaret Mann, including over \$3,000,000.00 of real property and
20 in excess of \$100,000.00 in rents from said property[.]” (Compl. at 4.) In his declaration,
21 Kipperman states that any seizure of asserts was undertaken pursuant to notice, an
22 opportunity for hearing, and a court order, pursuant to the rules of the bankruptcy court.
23 (Ex. A. to Kipperman Mot. at ¶ 6.) Furthermore, Kipperman provides a list of notices
24 from the bankruptcy court, arguing they “exemplify that certain material acts of which
25 Plaintiff complains were only achieved after appropriate notice, an opportunity to be heard
26 and Bankruptcy Court approval, within the course and scope of [his] duties as trustee.” (*Id.*
27 at ¶ 7.) Indeed, Plaintiff’s only claims against Kipperman result from the seizure of assets
28 as part of the bankruptcy case. Accordingly, the Court finds Kipperman is eligible for

1 quasi-judicial immunity. Because Plaintiff’s only claims against Carrol and Ortiz arise out
2 of their alleged supervision of Kipperman, they are also eligible for quasi-judicial
3 immunity. (*See* Compl. at 4) (“Richard Kipperman was hired and appointed by David
4 Ortiz and Tiffany Carroll for the purpose of administering a bankruptcy estate in the United
5 States Bankruptcy Court.”)

6 D. Leave to Amend

7 Generally, leave to amend is granted “even if no request to amend the pleading was
8 made, unless [the court] determines that the pleading could not possibly be cured by the
9 allegation of other facts.” *Lopez v. Smith*, 203 F.3d 1122, 1127 (9th Cir. 2000) (en banc)
10 (citation omitted)). Although plaintiffs proceeding *pro se* should be given an opportunity
11 to amend their complaints to overcome any deficiencies, leave to amend is not required
12 when “it clearly appears the deficiency cannot be overcome by amendment.” *See*
13 *Ashelman v. Pope*, 793 F.2d 1072, 1078 (9th Cir. 1986) (affirming district court’s dismissal
14 of *pro se* complaint without leave to amend because plaintiff’s complaint did not include
15 “allegations sufficient to overcome judicial and prosecutorial immunities.”). Plaintiff fails
16 to plead facts to show this Court has jurisdiction. Moreover, Defendants’ immunities to
17 Plaintiff’s claims could not be overcome by any amendment. Accordingly, the Court
18 declines to grant Plaintiff leave to amend.

19 **III.**

20 **CONCLUSION AND ORDER**

21 For these reasons, Defendants’ motions are granted.

22
23 **IT IS SO ORDERED.**

24 Dated: September 9, 2020

25 

26 Hon. Dana M. Sabraw
27 United States District Judge
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