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6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**  
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9 Kenneth Sachs,

10 Plaintiff,

11 v.

12 James F Wees,

13 Defendant.  
14

No. CV-22-00655-PHX-SMB

**ORDER**

15 Pending before the Court is Defendant James Wees’ Motion to Dismiss, (Doc. 10),  
16 which is fully briefed, (*see* Docs. 14; 17). Also, pending before the Court is Plaintiff  
17 Kenneth Sachs’s Motion to Seal. (Doc. 12.) Although oral argument was requested on the  
18 Motion to Dismiss, (Doc. 10 at 1), the Court declines to hold it, finding it unnecessary. *See*  
19 LRCiv 7.2(f). The Court has considered the briefing and relevant law and will grant the  
20 Motion to Dismiss but deny the Motion to Seal for reasons explained below.

21 **I. Background**

22 Plaintiff Kenneth Sachs alleges that, in December of 2014, Maryna Sachs retained  
23 Wees as her attorney for the dissolution of her marriage to Sachs. (Doc. 1 ¶ 10.) Sachs  
24 contends that Wees, as Maryna’s attorney, committed legal malpractice and submitted false  
25 information to Sachs’ court-appointed physiological evaluator. (*Id.* ¶¶ 11–12.) Sachs  
26 alleges that the court-appointed psychological evaluator “then made a custody  
27 recommendation to the Court on [Wees’] false information.” (*Id.* ¶ 12.) Sachs additionally  
28 alleges that “[t]he determination of custody in favor of [Maryna] was directly related to the

1 false\information [sic] that [Wees] presented to the Court.” (*Id.* ¶ 13.)

2 Sachs’ Complaint contains seven causes of action: (1) violation of his constitutional  
3 right to familial relations; (2) legal malpractice; (3) false representation; (4) professional  
4 misconduct; (5) perjury; (6) subordination of perjury; and (7) gross negligence. (*See*  
5 *generally* Doc. 1.) Of these claims, only the first claim is a purportedly federal; the other  
6 six are state law claims—some of which are not private rights of action. In his Complaint,  
7 Sachs seeks (1) monetary damages in the sum of \$25,000,000; (2) punitive damages; (3)  
8 pre- and post-judgment interests, costs, and attorney fees; and (4) equitable relief. (*Id.* at  
9 16.)

10 Sachs contends that—under 28 U.S.C. § 1343(a)(3)—this Court has jurisdiction.  
11 (*Id.* ¶ 4.) Wees filed the instant Motion, in which he argues that Sachs failed to invoke  
12 adequate subject matter jurisdiction. (Doc. 10 at 3–4.)

## 13 **II. Legal Standard**

14 Under Federal Rules of Civil Procedure Rule 12(b)(1), the Court may dismiss a  
15 cause of action if it lacks subject-matter jurisdiction. “Dismissal for lack of subject-matter  
16 jurisdiction because of the inadequacy of the federal claim is proper only when the claim  
17 is ‘so insubstantial, implausible, foreclosed by prior decisions of this Court, or otherwise  
18 completely devoid of merit as to not involve a federal controversy.’” *Steel Co. v. Citizens*  
19 *for a Better Env’t*, 523 U.S. 83, 89 (1998) (quoting *Oneida Indian Nation of N.Y. v. Courty*  
20 *of Oneida*, 414 U.S. 161, 666 (1974)). But “[a] document filed pro se is to be liberally  
21 construed, and a pro se complaint, however inartfully pleaded, must be held to less stringent  
22 standards than formal pleadings drafted by lawyers.” *Henry v. Adventist Health Castle*  
23 *Med. Ctr.*, 363 F. Supp. 3d 1128, 1132–33 (D. Haw. 2019) (quoting *Erickson v. Pardus*,  
24 551 U.S. 89, 94, 127 S.Ct. 2197, 167 L.Ed.2d 1081 (2007)) (alterations original).

## 25 **III. Discussion**

### 26 **A. Jurisdiction**

27 Sachs invokes this Court’s jurisdiction under 28 U.S.C. § 1343(a)(3). (*Id.* ¶ 4.) That  
28 statute provides the Court with jurisdiction to “redress the deprivation, under color of any

1 State law, statute, ordinance, regulation, custom, or usage, of any right, privilege or  
2 immunity secured by the Constitution of the United States or by any Act of Congress.” 28  
3 U.S.C. § 1342(a)(3). Moreover, in support of his only federal claim—violation of his  
4 constitutional right to familial relations—Sachs cites to 42 U.S.C. § 1983, which states in  
5 part “[e]very person who, under color of any statute, ordinance, regulation, custom, or  
6 usage, ... subjects ... any citizen of the United States ... to the deprivation of any rights,  
7 privileges, or immunities secured by the Constitution and laws, shall be liable to the party  
8 injured in an action at law.”

9 For his part, Wees contends that Sachs does not allege how Wees’ actions implicate  
10 42 U.S.C. § 1983 or how Wees is a “state actor” according to that statute. (Doc. 10 at 3–  
11 4.) Consequently, Wees argues that Sachs failed to establish an adequate and substantial  
12 federal claim, and therefore the Court should dismiss the Complaint. (*Id.*) The Court  
13 agrees.

14 “Merely [asserting] a constitutional claim” under section 1343(a)(3) “is not  
15 sufficient to obtain jurisdiction.” *Doe v. Klein*, 599 F.2d 338, 340 (9th Cir. 1979). The  
16 Supreme Court “has repeatedly held that the federal courts are without power to entertain  
17 claims otherwise within their jurisdiction if they are so attenuated and unsubstantial as to  
18 be absolutely devoid of merit; wholly unsubstantiated; obviously frivolous; plainly  
19 unsubstantial; or no longer open to discussion.” *Hagans v. Lavine*, 415 U.S. 528, 536–537  
20 (1974) (cleaned up); see also *Sachs v. Wees*, No. CV-22-00368-PHX-DWL, 2022 WL  
21 901415, at \*2 (D. Ariz. Mar. 28, 2022). “The doctrine of substantiality is especially  
22 important where a wholly frivolous federal claim serves as a pretext to allow a state law  
23 issue, the real focus of the claim, to be litigated in the federal system.” *Wees*, 2022 WL  
24 901415, at \*2 (quoting *Davis v. Pak*, 856 F.2d 648, 650-51 (4th Cir. 1988)).

25 Here, Sachs’ claim is insubstantial. His claim fails to confer jurisdiction on this  
26 Court because Sachs fails to show how 42 U.S.C. § 1983 is implicated or how Wees is a  
27 state actor. See *Wees*, 2022 WL 901415, at \*2 (“Plaintiff does not allege how 42 U.S.C. §  
28 1983 is implicated here or how [the defendant] could be considered a state actor.”); see

1 also *Lemke v. Jander*, 2021 WL 778653, \*4 (S.D. Cal. 2021) (“Plaintiff cannot invoke this  
2 Court’s jurisdiction based on allegations that Defendant violated Plaintiff’s constitutional  
3 rights because Plaintiff has not adequately alleged . . . that Defendant was acting under  
4 color of law.”)). Wees was a private attorney representing a non-governmental client.  
5 Sachs takes no pains to explain how this constitutes state action and the Court does not find  
6 it to be such. Indeed, even if Wees were a court-appointed attorney (which he is not), he  
7 would still not be considered a state actor under 42 U.S.C. § 1983. See *Miranda v. Clark*  
8 *County, Nev.*, 319 F.3d 465, 468 (9th Cir. 2003) (finding that a court-appointed attorney  
9 was not a state actor within the meaning of 42 U.S.C. § 1983 because “his function was to  
10 represent his client, not the interests of the state or county”).

11 Sachs fails to establish that a private attorney is a state actor and, thereby, fails to  
12 establish jurisdiction. See *Florer v. Congregation Pidyon Shevuyim, N.A.*, 639 F.3d 916,  
13 924 (9th Cir. 2011) (“In order for private conduct to constitute governmental action,  
14 something more must be present.” (internal quotation marks and citation omitted)).

15 Moreover, Sachs has already sued this same attorney, for the same claims, resulting  
16 from the same factual scenario, and had another judge in this District dismiss the action for  
17 the same reason. See generally *Wees*, 2022 WL 901415. Sachs has had multiple attempts  
18 to properly plead jurisdiction on these claims and has failed to do so.

19 Additionally, during the pendency of the Motion to Dismiss, Wees filed a Notice of  
20 Ruling in a Related Matter. (Doc. 16.) That Notice clearly establishes that Sachs sued  
21 Wees—in state court—for these same causes of actions, arising from the same factual  
22 circumstances, and that his case was dismissed for failure to state a claim. Thus, Sachs’  
23 claims are barred by the doctrine of res judicata. See *Owens v. Kaiser Found. Health Plan,*  
24 *Inc.*, 244 F.3d 708, 713 (9th Cir. 2001) (“Res judicata, also known as claim preclusion,  
25 bars litigation in a subsequent action of any claims that were raised or could have been  
26 raised in the prior action.” (quoting *Western Radio Servs. Co. v. Glickman*, 123 F.3d 1189,  
27 1192 (9th Cir.1997))); *Mpoyo v. Litton Electro-Optical Sys.*, 430 F.3d 985, 987 (9th Cir.  
28 2005) (“Res judicata applies when the earlier suit (1) involved the same claim or cause of

1 action as the later suit, (2) reached a final judgment on the merits, and (3) involved identical  
2 parties or privies.” (quoting *Sidhu v. Flecto Co.*, 279 F.3d 896, 900 (9th Cir.2002) (cleaned  
3 up))). Here, res judicata bars Plaintiff’s suit; thus, the Court must dismiss it with prejudice.

4 **B. Motion to Seal**

5 Sachs’ Motion to Seal suffers from two significant ailments. First, it does not  
6 comply with Local Rule 5.6(b). That rule requires that a party motioning to seal a  
7 document “set forth a clear statement of the facts and legal authority justifying the filing  
8 of the document under seal and must append (as a separate attachment) a proposed order  
9 granting the motion.” LRCiv 5.6(b). Here, Sachs’ Motion merely lists Arizona’s rules of  
10 civil procedure regarding motions to seal. (Doc. 12.) It does not contain any *relevant* legal  
11 authority, nor does it proffer any facts in support of the Motion, nor does it append a  
12 proposed order granting the Motion. (*Id.*) Thus, Sachs’ Motion is procedurally deficient.

13 Second, the Motion does not overcome the presumption articulated in *Kamakana v.*  
14 *City & Cty. of Honolulu*, 447 F.3d 1172 (9th Cir. 2006). There, the Ninth Circuit opined  
15 that the public has a general right to inspect judicial records and documents, such that a  
16 party seeking to seal a judicial record must overcome “a strong presumption in favor of  
17 access.” *Id.* at 1178. To do so, a party must “articulate compelling reasons supported by  
18 specific factual findings that outweigh the general history of access and the public policies  
19 favoring disclosure.” *Id.* at 1178–79 (internal quotation marks and citations omitted).  
20 Here, Sachs has provided no facts; thus, it is impossible for the Court to make any factual  
21 findings. Likewise, Sachs has not provided any compelling reason for granting the Motion  
22 to Seal. Indeed, as articulated above, his Motion contains nothing but irrelevant procedural  
23 rules. (*See* Doc. 12.) Consequently, he has failed to overcome the presumption in favor  
24 of public access to court filings, and the Court will deny the Motion to Seal.

25 **IV. Conclusion**

26 Accordingly,


27 **IT IS ORDERED** granting Defendant’s Motion to Dismiss with prejudice. (Doc.  
28 10.)

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**IT IS FURTHER ORDERED** denying Plaintiff's Motion to Seal. (Doc. 12.)

**IT IS FURTHER ORDERED** that the Clerk enter judgment in accordance with this order and terminate this case.

Dated this 19th day of July, 2022.



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Honorable Susan M. Brnovich  
United States District Judge