

SH

1 **WO**

2

3

4

5

6

**IN THE UNITED STATES DISTRICT COURT**

7

**FOR THE DISTRICT OF ARIZONA**

8

9 Kevin Eric Pesqueira,  
10 Plaintiff,

No. CV-15-01426-PHX-DGC (ESW)

11 v.

**ORDER**

12 Charles L. Ryan, et al.,

13 Defendants.

14

15 Plaintiff Kevin Eric Pesqueira, who is incarcerated at the Arizona State Prison  
16 Complex in Buckeye, Arizona, brought this civil rights case pursuant to 42 U.S.C.  
17 § 1983. Before the Court are Plaintiff’s “Motion Request Court Direct DOC Special  
18 Handling of Plaintiff’s Grievance and Subsequent Appeals Related to Count III of the  
19 Second Amended Complaint” (Doc. 56) and “Motion Asking Court to Help Plaintiff with  
20 Problem Accessing E-File Services” (Doc. 60), which the Court will construe as motions  
21 for injunctive relief.

**I. Background**

23 On screening of the First Amended Complaint under 28 U.S.C. § 1915A(a), the  
24 Court determined that Plaintiff stated an Eighth Amendment medical claim against  
25 Defendant Sedlar and ordered Defendant Sedlar to answer. (Doc. 12.) The Court  
26 dismissed the remaining claims and Defendants. (*Id.*)

**II. Discussion**

28 In the first Motion, Plaintiff asks the Court to order Arizona Department of

1 Corrections (ADC) Director Charles Ryan and the ADC “to allow Plaintiff safe access in  
2 using the inmate grievance system” with respect to Count Three of the Second Amended  
3 Complaint. (Doc. 56 at 4.) In a previous Order, the Court granted Plaintiff’s motion to  
4 withdraw the proposed Second Amended Complaint from the record. (Doc. 68.)  
5 Accordingly, Plaintiff’s “Motion Request Court Direct DOC Special Handling of  
6 Plaintiff’s Grievance and Subsequent Appeals Related to Count III of the Second  
7 Amended Complaint” will be denied as moot.

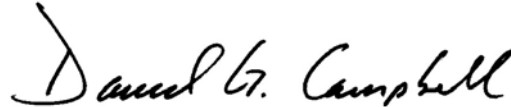
8 In the second Motion, Plaintiff asks the Court “to attempt rectifying Plaintiff’s  
9 inability to timely access in e-filing services at the Arizona Department of  
10 Corrections/Buckley Unit.” (Doc. 60 at 1.) A preliminary injunction is an “extraordinary  
11 remedy” that may be granted only where the movant shows that “he is likely to succeed  
12 on the merits, that he is likely to suffer irreparable harm in the absence of preliminary  
13 relief, that the balance of equities tips in his favor, and that an injunction is in the public  
14 interest.” *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); *Am. Trucking*  
15 *Ass’n, Inc. v. City of L.A.*, 559 F.3d 1046, 1052 (9th Cir. 2009). An injunction should not  
16 issue if it “is not of the same character, and deals with a matter lying wholly outside the  
17 issues in the suit.” *Kaimowitz v. Orlando*, 122 F.3d 41, 43 (11th Cir. 1997). But if the  
18 request for relief concerns the prisoner’s access to the courts, “a nexus between the  
19 preliminary relief and the ultimate relief sought is not required.” *Prince v. Schriro, et al.*,  
20 CV 08-1299-PHX-SRB, 2009 WL 1456648, at \*4 (D. Ariz. May 22, 2009) (citing  
21 *Diamontiney v. Borg*, 918 F.2d 793, 796 (9th Cir. 1990)). Because Plaintiff’s motion  
22 relates to his ability to communicate with the Court, his request for injunctive relief may  
23 be considered.

24 Plaintiff has failed to show a likelihood of success on the merits or irreparable  
25 injury as it pertains to his access-to-courts claim. To maintain such a claim, an inmate  
26 must submit evidence showing an “actual injury” resulting from the defendant’s actions.  
27 *Lewis v. Casey*, 518 U.S. 343, 349 (1996). With respect to an existing case, the actual  
28 injury must be “actual prejudice . . . such as the inability to meet a filing deadline or to

1 present a claim.” *Id.* at 348-49. There is no evidence that Plaintiff has faced an  
2 unreasonable delay or the inability to file anything in this action. A review of the docket  
3 shows that Plaintiff has filed numerous motions and responses. Plaintiff has not been  
4 prevented from bringing a claim as a result of the alleged denial of access to e-filing  
5 services. Thus, Plaintiff has not established actual injury. Plaintiff has not satisfied the  
6 remaining requirements that must be shown to warrant injunctive relief. *See Winter*, 555  
7 U.S. at 20.

8 **IT IS ORDERED** that the reference to the Magistrate Judge is **withdrawn** as to  
9 Plaintiff’s “Motion Request Court Direct DOC Special Handling of Plaintiff’s Grievance  
10 and Subsequent Appeals Related to Count III of the Second Amended Complaint”  
11 (Doc. 56) and “Motion Asking Court to Help Plaintiff with Problem Accessing E-File  
12 Services” (Doc. 60), and the motions are **denied**.

13 Dated this 1st day of September, 2017.

14  
15  
16 

17 \_\_\_\_\_  
18 David G. Campbell  
19 United States District Judge  
20  
21  
22  
23  
24  
25  
26  
27  
28