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8 **IN THE UNITED STATES DISTRICT COURT**
9 **FOR THE DISTRICT OF ARIZONA**

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11 Arron Shawn Bossardet,
12 Plaintiff,

13 v.

14 Centurion Healthcare, et al.,
15 Defendants.

No. CV-21-00179-TUC-RM

ORDER

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17 Pending before the Court is Plaintiff's Motion for Contempt and Sanctions for
18 Violation of Preliminary Injunction Order. (Doc. 190.) Defendant Centurion responded in
19 opposition. (Doc. 196.) Plaintiff replied (Doc. 204) and Defendant filed a Sur-Reply at
20 the Court's direction (Doc. 214). The Motion will be denied.

21 **I. Background**

22 Plaintiff Arron Shawn Bossardet—who was initially proceeding pro se but is now
23 represented by counsel—brought this civil rights action pursuant to 42 U.S.C. § 1983,
24 asserting Eighth Amendment medical care claims against multiple Defendants. (Doc. 17.)
25 The parties are currently engaged in discovery. On June 17, 2022, the Court granted
26 Plaintiff's Motion for Preliminary Injunction and ordered, in part, that Defendant
27 Centurion schedule Plaintiff for an appointment with a surgeon regarding a potential
28 surgical procedure to treat his gastrointestinal reflux disorder (GERD) and that it “timely

1 provide any surgery, procedure, medications, treatment, or follow up recommended by
2 the surgeon.” (Doc. 157 at 15.)

3 **II. Motion for Contempt and Sanctions**

4 Plaintiff avers that on August 11, 2022, he had fundoplication surgery for his
5 GERD. (Doc. 190.) He returned to the prison around 9:00 p.m. (*Id.*) His surgeon had
6 ordered that he receive oxycodone every four hours following the surgery, however,
7 Plaintiff did not receive oxycodone until approximately 10:00 a.m. on August 13, 2022.
8 (*Id.*) Plaintiff argues that this delay in receiving the treatment recommended by his
9 surgeon violates the Court’s June 17, 2022 Order. (*Id.*)¹

10 Defendant Centurion provided a lengthy response explaining the events that
11 occurred between August 11 and August 13. (Doc. 196.) Centurion argues that there is no
12 basis to impose sanctions and that it has substantially complied with the Court’s Order.
13 (*Id.*) Defendant provides a declaration from Amanda Thrush, LPN, the Facility Health
14 Administrator at Centurion who was responsible for coordinating with the medical
15 providers on staff when Plaintiff returned to the prison from the hospital on August 11.
16 (*Id.*; see Doc. 196-2.) Ms. Thrush states that she learned from NP Warren, Plaintiff’s
17 primary provider at the time, that she had entered a prescription for Acetaminophen with
18 Codeine (“Tylenol #3”) as a replacement for Acetaminophen with Oxycodone
19 (“Percocet”), which is “a comparable medication and utilized more at the prisons rather
20 than oxycodone that tends to be abused more.” (Doc. 196-2.) However, Plaintiff refused
21 to take the Tylenol #3 and requested that he receive the Percocet, per the Court Order
22 directing Centurion to provide medications recommended by his physician. (*Id.*) NP
23 Warren then discontinued the Tylenol #3 and ordered the Percocet, and informed Plaintiff
24 there could be a delay in obtaining it from the pharmacy. (*Id.*) Because Percocet is a “CII
25 medication,” the only way for the prison to obtain it is through “e-scribing” and none of

26 ¹ Plaintiff’s Motion also includes a one-sentence argument that his rights were violated
27 by Defendant’s failure to comply with the Court’s Order and he is therefore entitled to
28 attorneys’ fees pursuant to 42 U.S.C. § 1997e(d)(1)(A). As he does not develop this
argument whatsoever, the Court will not address it. *See Officia Imaging, Inc. v.*
Langridge, No. 2018 WL 6137183, at *13 (C.D. Cal. Aug. 7, 2018) (courts need not
address undeveloped arguments).

1 the providers at Centurion at that time had the capability to obtain it. (*Id.*) Thus, Ms.
2 Thrush contacted the Regional Medical Director, Dr. Orm, who ordered the medication
3 via e-scribing, and then arranged for the pharmacy courier to deliver the medication that
4 day. (*Id.*) Before Ms. Thrush left that evening, the night shift nurse informed her that the
5 Percocet had arrived and that he would administer it to Plaintiff; however, the Percocet
6 actually had not arrived. (*Id.*) Ms. Thrush states that, had she known the Percocet had not
7 arrived, she would have followed up to ensure it was received that night. (*Id.*) She further
8 states that the night shift nurse who miscommunicated regarding the Percocet is no longer
9 employed with Centurion due in part to this miscommunication. (*Id.*) The next morning,
10 when other medical staff discovered the Percocet had not arrived, it was immediately
11 ordered and administered. (*Id.*) Ms. Thrush states that neither she nor the medical
12 provider intended to disregard the surgeon's pain medication recommendation. (*Id.*)
13 Defendant additionally provides medical records documenting these events. (Doc. 196-1.)
14 Thus, Defendant argues that it substantially complied with the Court's Order by offering
15 him Tylenol #3, which he refused to take even when the Percocet was not available.
16 (Doc. 196 at 6.) Defendant further argues that Plaintiff has not indicated whether or to
17 what extent he was suffering without the Percocet, nor whether it alleviated any pain
18 when he did take it. (*Id.*) Defendant argues that the delay in obtaining the Percocet,
19 combined with Plaintiff's refusal to take the Tylenol #3, should be considered at most a
20 technical violation of the Order and not a failure to substantially comply. (*Id.*)

21 In reply, Plaintiff disputes several of Defendant's contentions. (Doc. 204.) He
22 states first that he gave Defendant notice that he would need pain medications upon his
23 return from surgery, due to previous experiences not receiving pain medication following
24 surgery. (*Id.* at 1, 7.) He states that when he returned to the prison following his surgery
25 with a prescription from his surgeon for Percocet, the intake RN placed an order for
26 Tylenol Arthritis. (*Id.* at 1-2.) Plaintiff states that he informed the intake RN that he was
27 experiencing pain but did not receive pain medication the night of August 11, 2022. (*Id.*)
28 On August 12, Plaintiff met with NP Warren, who informed him that she had ordered

1 Tylenol #3 instead of Percocet.² (*Id.* at 3.) Plaintiff told NP Warren to “ensure that the
2 record reflected” that Plaintiff did not agree to the Tylenol #3 instead of the Percocet.
3 (*Id.*) NP Warren then discontinued the Tylenol #3, but, according to Plaintiff, did not
4 inform him there could be a delay in obtaining the Percocet. (*Id.*) Plaintiff states that he
5 asked NP Warren to give him pain medication from Centurion’s clinic stock until the
6 Percocet arrived; she informed him that pain medications were not kept in clinic stock.
7 (*Id.*) Plaintiff disputes the truth of this statement, contending that, pursuant to prison
8 policy, pain medications including liquid morphine and Ativan would have been
9 available in clinic stock, and Defendant has not explained why Plaintiff did not receive
10 them. (*Id.* at 4-5.) Plaintiff further states that he did not receive pain medication on
11 August 12, and that he received his first dose of Percocet on August 13. (*Id.* at 5.)
12 Plaintiff provides a declaration stating that he suffered without pain medication for 37
13 hours following surgery. (Doc. 204-2.)

14 Defendant’s Sur-Reply provides additional information in support of its argument
15 that it substantially complied with the Court’s Order that it timely provide treatment,
16 including medication, recommended by Plaintiff’s surgeon. (Doc. 214.) According to the
17 declaration of NP Warren, she learned that the surgeon had recommended two
18 medications for Plaintiff post-surgery: (1) Tylenol Arthritis and (2) Percocet. (*Id.* at 2.)
19 NP Warren authorized entry for the Tylenol Arthritis, believing that Plaintiff could
20 receive it that night. (*Id.*) The next morning, on August 12, NP Warren entered the
21 prescription for Tylenol #3 in an attempt to “proactively manage plaintiff’s pain level.”
22 (*Id.*) NP Warren then learned that Tylenol Arthritis is a non-formulary medication and
23 was therefore not approved. (*Id.*) NP Warren based her decision to enter the prescription
24 for Tylenol #3 on (1) her good faith belief that it was within her judgment and discretion
25 to provide a comparable post-surgical pain medication rather than the one recommended
26 by the surgeon; (2) her seven years of experience, during which time she effectively
27 managed post-surgical pain numerous times by administering Tylenol #3; (3) the fact that

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² Plaintiff’s Reply refers to the medication as Oxycodone.

1 Tylenol #3 is a formulary medication and is therefore more readily available than
2 Percocet, which is non-formulary and not able to be ordered by a nurse practitioner. (*Id.*
3 at 3.) When NP Warren met with Plaintiff on August 12, he refused to take the Tylenol
4 #3 and stated he would only take the medication the surgeon had recommended, per the
5 Court’s Order. (*Id.*) In response to Plaintiff’s contention that she should have given him
6 liquid morphine or Ativan from clinic stock, NP Warren states that (1) neither of these
7 medications were indicated or prescribed for Plaintiff’s condition; (2) liquid morphine is
8 extremely powerful and not commonly prescribed for post-surgical pain like Plaintiff’s
9 and Ativan is for anxiety; and (3) Plaintiff had stated he would only take Percocet. (*Id.* at
10 4.) NP Warren further states that (1) Plaintiff did not present in any acute distress on
11 August 12; (2) she had explained to Plaintiff that the type of pain he was experiencing,
12 which was specific to the surgery he received, would not be impacted by narcotic pain
13 medication; (3) Plaintiff did not order Tylenol or Ibuprofen from the commissary on
14 August 11, but did order spicy food, contrary to the instructions he was given for
15 managing his GERD symptoms. (*Id.*)

16 **III. Law**

17 Civil contempt consists of “a party’s disobedience to a specific and definite court
18 order by failure to take all reasonable steps within the party’s power to comply.” *In re*
19 *Dual-Deck Video Cassette Recorder Antitrust Litig.*, 10 F.3d 693, 695 (9th Cir. 1993).
20 “The contempt ‘need not be willful,’ and there is no good faith exception to the
21 requirement of obedience to a court order.” *Id.* (citing *In re Crystal Palace Gambling*
22 *Hall, Inc.*, 817 F.2d 1361, 1363 (9th Cir. 1987)). “[A] person should not be held in
23 contempt if his action ‘appears to be based on a good faith and reasonable interpretation
24 of the [court’s order].’” *Id.* (citing *Vertex Distrib., Inc. v. Falcon Foam Plastics, Inc.*, 689
25 F.2d 885, 889 (9th Cir. 1982)). “Substantial compliance with the court order is a defense
26 to civil contempt, and is not vitiated by a few technical violations where every reasonable
27 effort has been made to comply.” *Id.* (internal citations omitted).

1 “The party alleging civil contempt must demonstrate that the alleged contemnor
2 violated the court's order by “clear and convincing evidence,” not merely a
3 preponderance of the evidence.” *Id.* (citing *Vertex*, 689 F.2d at 889). An appellate court
4 reviews a district court’s decision regarding contempt for abuse of discretion. *Id.* (citing
5 *Crystal Palace*, 817 F.2d at 1364). “[C]ivil contempt is a severe remedy” and “principles
6 of basic fairness require that those enjoined receive explicit notice of what conduct is
7 outlawed before being held in civil contempt.” *Taggart v. Lorenzen*, 139 S. Ct. 1795,
8 1802 (2019) (internal citation and quotation omitted).

9 **IV. Analysis**

10 The Court does not find that sanctions should issue at this time. The Court finds
11 that Defendant substantially complied with the Court’s Order by ordering Tylenol #3 on
12 August 12 to treat Plaintiff’s post-surgical pain. Because Tylenol #3 is a formulary
13 medication, while Percocet is a non-formulary medication, Defendant took reasonable
14 steps to treat Plaintiff’s pain as quickly as possible by ordering Tylenol #3, even before it
15 became apparent that the Tylenol Arthritis was not available. Furthermore, Defendant
16 demonstrated intent to comply with the Court’s Order by obtaining a prescription for
17 Percocet as soon as Plaintiff informed Defendant that he would not take the Tylenol #3
18 and following up multiple times to ensure the Percocet was received. Plaintiff could have
19 taken the Tylenol #3 while waiting for the Percocet to arrive; however, he chose not to do
20 so. In light of Plaintiff’s refusal to take the Tylenol #3 and the miscommunication
21 regarding the Percocet, the delay in providing the Percocet is, at most, a “technical
22 violation” of the Court’s Order.

23 The miscommunication regarding the receipt and provision of Percocet was
24 problematic but it appears that Defendant has taken steps to prevent such a
25 miscommunication from occurring again by removing the culpable nurse from his
26 position. The Court is satisfied that Centurion made reasonable efforts to comply with the
27 Order and therefore declines to issue a finding of contempt.


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Accordingly,

IT IS ORDERED that Court is Plaintiff's Motion for Contempt and Sanctions for Violation of Preliminary Injunction Order (Doc. 190) is **denied**.

Dated this 12th day of October, 2022.



Honorable Rosemary Márquez
United States District Judge