UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

GENE RAY BALL,

Plaintiff,

v.

B. WASHBURN,

Defendant.

Case No. 2:22-cv-1013-HZ

OPINION AND ORDER

HERNÁNDEZ, District Judge:

Pro se plaintiff Gene Ray Ball, an adult in custody (AIC) at the Two Rivers Correctional Institute (TRCI), filed this civil rights action claiming a violation of his constitutional rights under the Fourth Amendment. *See* Am. Compl., ECF 21. Defendant moves to dismiss plaintiff's claim under Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim upon which relief can be granted. *See* Mot., ECF 24. The court denies defendant's motion to dismiss.

STANDARDS

A motion to dismiss under Federal Rule of Civil Procedure 12(b)(6) tests the sufficiency of the claims. *Navarro v. Block*, 250 F.3d 729, 732 (9th Cir. 2001). "When evaluating the sufficiency of a complaint's factual allegations, the court must accept all material facts alleged in the complaint as true and construe them in the light most favorable to the non-moving party." *Wilson v. Hewlett-Packard Co.*, 668 F.3d 1136, 1140 (9th Cir. 2012). A motion to dismiss under Rule 12(b)(6) will be granted if a plaintiff alleges the "grounds" of his "entitlement to relief" with nothing "more than labels and conclusions, and a formulaic recitation of the elements of a cause of action[.]" *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007).

To survive a motion to dismiss, a complaint "must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). A plaintiff must "plead[] factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id*. In other words, a complaint must state a plausible claim for relief and contain "well-pleaded facts" that "permit the court to infer more than the mere possibility of misconduct[.]" *Id*. at 679.

Courts must liberally construe pro se pleadings. *Wolfe v. Strankman*, 392 F.3d 358, 362 (9th Cir. 2004). A court cannot dismiss a pro se complaint without first explaining to the plaintiff the deficiencies of the complaint and providing an opportunity to amend. *Ferdik v. Bonzelet*, 963 F.2d 1258, 1261 (9th Cir. 1992). Dismissal of a pro se complaint without leave to amend is proper only if it is clear that the deficiencies of the complaint could not be cured by amendment. *Lucas v. Department of Corrections*, 66 F.3d 245, 248 (9th Cir. 1995).

DISCUSSION

Plaintiff alleges that he was "wrongfully strip searched" by defendant on February 5, 2022, in the disciplinary segregation unit of TRCI. Am. Compl. 5. Plaintiff alleges that the search was "unwarranted" and violated his rights under the Fourth Amendment. *Id.* at 7. Defendant moves to dismiss plaintiff's claim under Rule 12(b)(6). *See* Mot 3-6.

1. Fourth Amendment Claim

The Fourth Amendment guarantees "the right of the people to be secure . . . against unreasonable searches and seizures." U.S. Const. amend. IV. "Whether a search is reasonable under the Fourth Amendment requires a case-by-case 'balancing of the need for the particular search against the invasion of personal rights that the search entails[.]'" *Byrd v. Maricopa Cnty. Sheriff's Dep't*, 629 F.3d 1135, 1141 (9th Cir. 2011) (quoting *Bell v. Wolfish*, 441 U.S. 520, 559 (1979)). "The required factors for courts to consider include: (1) the scope of the particular intrusion, (2) the manner in which it is conducted, (3) the justification for initiating it, and (4) the place in which it is conducted." *Id*. (quotation marks omitted) (quoting *Bell*, 441 U.S. at 559).

The Supreme Court has stated that "[m]aintaining safety and order" at prisons "requires the expertise of correctional officials, who must have substantial discretion to devise reasonable solutions to the problems they face." *Florence v. Bd. of Chosen Freeholders*, 566 U.S. 318, 326 (2012). Thus, "correctional officials must be permitted to devise reasonable search policies to detect and deter the possession of contraband in their facilities," and such a policy "must be upheld 'if it is reasonably related to legitimate penological interests.'" *Id*. at 326, 328 (quoting *Turner v. Safley*, 482 U.S. 78, 89 (1987)). Nonetheless, deference to prison officials is unwarranted where search methods are unreasonable. *Shorter v. Baca*, 895 F.3d 1176, 1189 (9th Cir. 2018). Strip searches generally do not violate the Fourth Amendment rights of prisoners. *See*

Michenfelder v. Sumner, 860 F.2d 328, 332–33 (9th Cir. 1988). But strip searches that are "excessive, vindictive, harassing, or unrelated to any legitimate penological interest" may be unconstitutional. *Id*. at 332.

Here, plaintiff filed an amended complaint on January 13, 2023, alleging a violation of his Fourth Amendment rights. *See* Am. Compl. 3. In the limited space provided on the civil rights complaint form that plaintiff used, he alleged that he was "wrongfully strip searched" on February 5, 2022, by defendant. *Id.* at 5. Defendant cites that language and argues that plaintiff failed to "describe the encounter on which his case is based." Mot. 6. Further, defendant argues, "[w]ithout more factual allegations, Plaintiff's [amended] complaint lacks enough detail to state a plausible claim for relief." *Id*. (citing *Iqbal*, 556 U.S. at 678). However, defendant overlooks the declaration plaintiff included in his amended complaint that states the following:

> The plaintiff . . . was housed in Disciplinary Segregation and had been housed there for five months. . . . There is no access to contraband at any time.
>
> The plaintiff had used DOC-issued soap to craft a hook, stuck it to the wall, to hold his radio headphones. [Defendant] had ordered the plaintiff to remove it, which he did not do. On 2/5/2022, [defendant] pulled plaintiff out of his cell due to the continued presence of the soap hook, . . . cuffed the plaintiff to a wall and forced him to strip, while subjecting him to continuous aggressive verbal abuse. He left the plaintiff naked, and called him stupid, hard-headed, dumb, over and over again, in different variations. He slowly carried out the search, with long pauses to heap verbal abuse on the plaintiff, staring at him standing naked for many times longer than necessary to carry out the unwarranted search.
>
> The search was not merited . . . , as the plaintiff had no access to contraband. The search was excessive and prolonged for [defendant]'s pleasure and to demean the plaintiff.

Am. Compl. 11. Although defendant argues that, "[p]laintiff does not . . . explain how the search was carried out or what about the search invaded his constitutional rights[,]" Mot. 5, the amended complaint clearly shows otherwise. *See* Am. Compl. 11.

The court denies defendant's motion to dismiss for failure to state a claim because the allegations in plaintiff's amended complaint "contain sufficient factual matter [that], accepted as true, . . . state a claim to relief that is plausible on its face." *See Iqbal*, 556 U.S. at 678; *see also*, *Michenfelder*, 860 F.2d at 332 (recognizing that strip searches that are "excessive, vindictive, harassing, or unrelated to any legitimate penological interest" may violate the Fourth Amendment).

CONCLUSION

Defendant's motion to dismiss (ECF 24) is DENIED.

IT IS SO ORDERED.

DATED: June 7, 2023.

Marco A. Hernández
United States District Judge