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U.S. COURT OF APPEALS

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UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

VICTOR HOUX, Plaintiff-Appellant, v. LUKE KOLL, Psych Tech Unit 8, CSH; et al., Defendants-Appellees.	No. 15-17094 D.C. No. 1:15-cv-00146-LJO-SAB MEMORANDUM[*]

Appeal from the United States District Court
for the Eastern District of California
Lawrence J. O'Neill, Chief Judge, Presiding

Submitted November 16, 2016[**]

Before: LEAVY, BERZON, and MURGUIA, Circuit Judges.

California civil detainee Victor Houx appeals pro se from the district court's judgment dismissing his action alleging Fourth Amendment claims arising out of a search of his person and his sleeping area. We have jurisdiction under 28 U.S.C.

[*] This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

[**] The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

§ 1291. We review de novo the district court's dismissal under 28 U.S.C. § 1915(e)(2)(B)(ii). *Barren v. Harrington*, 152 F.3d 1193, 1194 (9th Cir. 1998) (order). We affirm in part, reverse in part, and remand.

Houx alleged that defendant Koll conducted an unclothed strip search without cause. These allegations, liberally construed, were "sufficient to warrant ordering [defendant Koll] to file an answer." *Wilhelm v.* Rotman, 680 F.3d 1113, 1116 (9th Cir. 2012); *see also Thompson v. Souza*, 111 F.3d 694, 699-701 (9th Cir. 1997) (setting forth factors to evaluate whether a search is reasonable under the Fourth Amendment claim); *Michenfelder v. Sumner*, 860 F.2d 328, 332 (9th Cir. 1988) ("[N]ot all strip search procedures will be reasonable; some could be excessive, vindictive, harassing, or unrelated to any legitimate penological interest."). Accordingly, we reverse the judgement in part, and remand for further proceedings on Houx's Fourth Amendment claim against defendant Koll stemming from his strip search.

In his opening brief, Houx fails to address how the district court erred in dismissing his claim relating to the search of his property and his claims against defendants King and Lewright. Thus, Houx has waived his appeal of the dismissal of those claims. *See Smith v. Marsh*, 194 F.3d 1045, 1052 (9th Cir. 1999) ("[O]n appeal, arguments not raised by a party in its opening brief are deemed waived.");

see also Greenwood v. FAA, 28 F.3d 971, 977 (9th Cir. 1994) ("We will not manufacture arguments for an appellant, and a bare assertion does not preserve a claim . . . .").

Houx's motion to take judicial notice, filed on January 25, 2016, is denied.

AFFIRMED in part, REVERSED in part, and REMANDED.