



1 deliberate indifference to his serious medical needs against defendants Oaks, Pascoe, Riddle,  
2 Beer, Garcia, and Cubos.” (Doc. No. 12 at 2–3) (footnote omitted.)

3 Plaintiff was provided an opportunity to file objections to the findings and  
4 recommendations. On April 26, 2021, plaintiff filed his objections. (Doc. No. 15.) Specifically,  
5 plaintiff objected to the recommendation that his excessive force claim against defendant Pascoe  
6 be dismissed. *Id.*

7 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C) and Local Rule 304, this  
8 court has conducted a *de novo* review of this case. Having carefully reviewed the entire file, the  
9 court finds the findings and recommendations to be supported by the record and proper analysis.  
10 Plaintiff’s objection to the recommended dismissal of the excessive force claim against defendant  
11 Pascoe is without merit.

12 An excessive force claim requires that a defendant actually use force against the plaintiff.  
13 *See Hudson v. McMillian*, 503 U.S. 1, 6–7 (1992). Here, plaintiff has not alleged that defendant  
14 Pascoe made forceful contact with him; instead, plaintiff describes defendant Pascoe as a  
15 “lookout” who failed to intervene when defendant Oaks unlawfully struck the plaintiff. As such,  
16 plaintiff has alleged facts sufficient only for a failure to protect claim against defendant Pascoe.<sup>1</sup>  
17 Accordingly,

- 18 1. The findings and recommendations issued on April 14, 2021, (Doc. No. 12,) are  
19 adopted in full;
- 20 2. All claims and defendants are dismissed,<sup>2</sup> except for plaintiff’s Eighth Amendment  
21 excessive force claim against defendant Oaks; plaintiff’s Eighth Amendment  
22 failure to protect claim against defendant Pascoe; plaintiff’s Eighth Amendment  
23 sexual assault claim against defendant Oaks; and plaintiff’s Eighth Amendment  
24 claim for deliberate indifference to his serious medical needs against defendants

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25 <sup>1</sup> Plaintiff also objects to the dismissal of his failure to protect claim against defendant Pascoe,  
26 but the magistrate judge did not recommend that this claim be dismissed. The court agrees that  
27 the failure to protect claim against defendant Pascoe is sufficiently pled at this stage.

28 <sup>2</sup> Plaintiff’s cover-up claim is dismissed without prejudice. All other claims that are being  
dismissed are dismissed with prejudice.

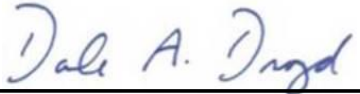
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Oaks, Pascoe, Riddle, Beer, Garcia, and Cubos; and

3. The Clerk of Court is directed to reflect the dismissal of defendant M. Gamboa from this action on the court's docket.

IT IS SO ORDERED.

Dated: July 13, 2021

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UNITED STATES DISTRICT JUDGE