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**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA**

**ARMANDO OSEGUEDA, et al.,**  
  
**Plaintiffs,**  
  
**v.**  
  
**STANISLAUS COUNTY PUBLIC SAFETY  
CENTER., et al.,**  
  
**Defendants.**

**1:16-cv-1218-LJO-BAM**  
  
**MEMORANDUM DECISION AND  
ORDER RE DEFENDANTS’ SECOND  
MOTION TO DISMISS**  
  
**(ECF No. 23)**

This is a putative class action suit commenced by Plaintiffs Armando Osegueda and Robert Palomino (“Plaintiffs”) alleging four causes of action under 42 U.S.C. § 1983 against Defendants Stanislaus County Public Safety Center (“PSC”); Stanislaus County Sheriff’s Office (“Sheriff’s Office”); Adam Christianson, the Stanislaus County Sheriff; Bill Duncan, PSC Facilities Captain; Greg Clifton, Lieutenant of Units 1 and 2; Ronald Lloyd, Commander of Bureau Administrative Services; Steven Verver, a sergeant at PSC; and James Shelton, a classification officer at PSC (collectively, “Defendants”). Second Amended Complaint (“SAC”) (ECF No. 22). Plaintiffs filed the SAC after the Court issued a memorandum decision and order granting in part and denying in part Defendants’ motion to dismiss the First Amended Complaint. *See* ECF No. 21.

1 Now before the Court is Defendants' second motion to dismiss pursuant to Federal Rule<sup>1</sup> of Civil  
2 Procedure 12(b)(6). ECF No. 23. Plaintiffs filed their opposition (ECF No. 25) and Defendants have  
3 replied (ECF No. 26). This matter is suitable for disposition on the papers. *See* E.D. Cal. L.R. 230(g).  
4 For the reasons the follow, the Court GRANTS IN PART AND DENIES IN PART Defendants' motion  
5 to dismiss.

## 6 FACTUAL ALLEGATIONS<sup>2</sup>

### 7 **A. Classification at Stanislaus County Detention Facilities**

8 Upon booking in Stanislaus County detention facilities, detainees are asked whether they are  
9 "active" or "a drop-out," or if they can be housed "with anybody or whether they need protection." SAC  
10 ¶¶ 78-79.<sup>3</sup> They are not provided the option to say that they are neither. *Id.* ¶ 79. If a detainee is  
11 classified as an active Norteño (gang member) he is issued a green and white jumpsuit, which, according  
12 to Sheriff's Office policy, denotes "Administrative Segregation and Norteño," and is housed in an  
13 "active tank<sup>4</sup>," along with other suspected gang members *Id.* ¶ 80. According to this policy, detainees  
14 subject to "Administrative Segregation" are defined as

15 Inmates who are determined to be prone to escape, assault staff, assault other inmates, violate  
16 facility rules or criminal laws, and/or disrupt the operations of the facility. Administrative  
17 segregation shall consist of separate and secure housing, but shall not involve any other  
deprivations of privileges other than is necessary to obtain the objective of protecting other  
inmates and staff or as a consequence of the inmates behavior.

18 *Id.* ¶¶ 51, 81. Furthermore, the Sheriff's Office maintains a list of "hazard codes," assigning codes to  
19 Norteño, Sureño, and Northern Hispanic groups (which are typically associated with persons of  
20 \_\_\_\_\_

21 <sup>1</sup> All further references to any "Rule" are to the Federal Rules of Civil Procedure, unless otherwise indicated.

22 <sup>2</sup> These allegations are drawn from the SAC, the general truth of which the Court must assume for purposes of a Rule  
12(b)(6) motion to dismiss. *See Lazy Y. Ranch LTD. v. Behrens*, 546 F.3d 580, 588 (9th Cir. 2008).

23 <sup>3</sup> The SAC does not provide a specific explanation of what it means if an inmate can be housed "with anybody or whether  
24 they need protection." The Court infers this line of questioning to be the Sheriff's Office's means of determining whether or  
not incoming detainees are gang members.

25 <sup>4</sup> The Court infers from the SAC that a "tank" is the word used to describe a housing unit in the Men's Jail.

1 Hispanic descent),” but does not assign codes to groups associated with other races, such as the Aryan  
2 Brotherhood, Skinheads, Juggalos, Crips, Bloods, and Pirus. *Id.* ¶ 57, 82. The Sheriff’s Office also does  
3 not disclose its classification records to defendants or their attorneys, but makes these records available  
4 to the prosecution. *Id.* ¶¶ 56, 83. As a result, detainees cannot “intelligently answer or oppose [their]  
5 classification.” *Id.*

6 **B. Conditions in Norteño and Northern Hispanic “Tanks” at the Stanislaus County Men’s Jail**

7 Detainees who are classified as active Norteños are housed in “active tanks” upon booking. *Id.* ¶  
8 80. The active tanks house both pretrial detainees and individuals serving sentences for misdemeanors  
9 and/or serving “local prison” time pursuant to AB 109<sup>5</sup>, and pre-trial detainees and convicted inmates  
10 are often housed in the same tank. *Id.* ¶ 90-91. Each active tank is twenty-five feet by twenty feet,  
11 contains six bunk beds, and houses twelve men. *Id.* ¶¶ 84-85. The tanks are also equipped with two  
12 toilets and sinks and two large picnic-style tables and a telephone. *Id.* ¶ 85, 87. Some tanks are  
13 “unsanitary and in disrepair” and contain black mold; upper respiratory infections and other illnesses are  
14 common among inmates housed in the active tanks. *Id.* ¶ 89.

15 Inmates housed in active tanks are “offered yard privileges outside constrained in a series of  
16 cages, without recreational equipment, for three hours a week.” *Id.* ¶ 91. The three hours are split into  
17 two ninety-minute increments. *Id.* If a detainee is away when his yard time his called, he is not given an  
18 alternate time and must wait until the next week for his yard privilege. *Id.*

19 While they are housed in the active tanks, detainees are restrained by waist chains, shackles, and  
20 lockboxes that secure their hands tightly to their waist during attorney visits, personal visits, and trips to  
21 the courthouse. *Id.* ¶ 92. The lockboxes at the Men’s Jail cause detainees to experience pain and  
22 discomfort and make the use of telephones painful and impracticable. *Id.* ¶ 92-93.

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24 <sup>5</sup> California Assembly Bill 109, which went into effect in October 2011, “shifted responsibility for incarceration and parole  
25 supervision of prisoners convicted of certain types of crimes from the state prison system to the counties.” *Labonte v.*  
*Governor of California*, No. EDCV 13-1204-VAP (MAN), 2014 WL 1512229, at \*2 (C.D. Cal. Apr. 14, 2014).

1 **C. Conditions in the “B-Max”**

2 The B-Max is the maximum security unit at PSC. *Id.* ¶ 29. Assignment to the B-Max is often  
3 based on the charges that the pretrial detainee is facing allegations that have been charged (but not  
4 proven) that the person is a Norteño or Northern Hispanic gang member. *Id.* ¶ 54. At the time the SAC  
5 was filed, there were fifteen pretrial detainees housed in the B-Max who were classified as active  
6 Norteño or Northern Hispanic gang members. *Id.* ¶ 49. These detainees have been housed in  
7 administrative segregation for periods ranging from between five months and seven years, and half of  
8 these detainees have been housed in administrative segregation without meaningful review for more  
9 than three years. *Id.* There are also pretrial detainees who have been housed in the B-Max for more than  
10 ten years waiting for their trials. *Id.* Administrative segregation is “over-used” in the Stanislaus County  
11 jail system and the majority of pretrial detainees who are housed in administrative segregation are  
12 housed there for “non-disciplinary reasons.” *Id.* ¶ 51. Pretrial detainees who are assigned to the B-Max  
13 are often kept in the B-Max for disciplinary reasons and are often held there for indeterminate lengths  
14 after their disciplinary periods are served. *Id.* ¶ 58.

15 A detainee housed in the B-Max shares a “cramped concrete cell” that measures six-and-a-half  
16 feet by twelve feet with one other cellmate. *Id.* ¶ 59. The cell has a bunk bed, a combination toilet-sink  
17 unit, a desk, a stool, and a fluorescent light in the ceiling. *Id.* Detainees in the B-Max stay in their cells  
18 for thirty-eight to eighty continuous hours at a time and are only permitted three showers per week and  
19 three hours of “yard/recreation” time per week. *Id.* ¶¶ 59, 64. First-floor detainees are scheduled for yard  
20 time on Mondays, Thursdays, and Saturdays for one hour at a time. *Id.* Second-floor detainees are  
21 scheduled for yard time on Tuesdays, Fridays, and Sundays. *Id.* Morning and evening yard times are  
22 alternated. *Id.*

23 The “recreational yard” is an enclosed concrete cell with a window approximately twenty feet  
24 high equipped with a telephone and a television. *Id.* ¶ 63-64. There is no access to the outdoors, no  
25 exercise equipment, no recreational equipment, and no seating. *Id.* ¶ 64. Because the window is covered

1 with a screen or wired mesh, the window does not allow for unobstructed sunlight and fresh air, and  
2 does not afford detainees an outdoor environment. *Id.* B-Max detainees are only exposed to the outdoors  
3 during their walks to and from transportation taking them to the courthouse. *Id.* ¶ 65. Furthermore, the  
4 yard schedule and telephone restrictions limit B-Max detainees to only four telephone calls during  
5 normal business hours per month. *Id.* ¶ 67.

6 Like detainees housed in active tanks, B-Max detainees are also restrained by waist chains,  
7 shackles, and lockboxes that secure their hands to their waist during attorney visits, personal visits, and  
8 court. *Id.* ¶ 71. The lockboxes cause them to experience pain and discomfort and make it painful and  
9 impracticable for detainees to use the telephones to speak to their visitors. *Id.* ¶¶ 72-73.

10 B-Max detainees are unable to challenge or request meaningful review of the conditions in the  
11 B-Max, including the amount of time in which they are confined to their cells. *Id.* ¶ 68, 70. Defendant  
12 Clifton has informed them that housing is not a “grievable” matter and that housing in the B-Max “is not  
13 a restrictive program.” *Id.* ¶¶ 68, 70. Defendant Verver has informed them that “current policy and  
14 procedure are being administered correctly in regards to the classification and housing of inmates in  
15 Stanislaus County. You were and are housed with respect to your charges.” *Id.* ¶ 69. Defendants, “by  
16 and through their policies and practices, personally and through their agents,” have suggested that if  
17 detainees are unhappy with their housing, they could always debrief.<sup>6</sup> *Id.* ¶ 75. Furthermore, detainees  
18 are denied the ability to make “citizen’s complaints” regarding officer misconduct or the  
19 “disproportionately harsh treatment they are afforded,” and are then informed that they are “not a  
20 citizen, you are an inmate.” *Id.* ¶ 77.

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22 <sup>6</sup> The SAC does not provide a specific explanation for what it means for a detainee to “debrief.” However, the California  
Court of Appeal, citing section 3378.1(a) of Title 15 of the California Code of Regulations, has defined “debriefing” as

23 “the process by which a gang coordinator/investigator determines whether an inmate/parolee (subject) has dropped  
24 out of a gang. A subject shall be debriefed only upon his or her request, although staff may ask a subject if he or she  
wants to debrief. Debriefing shall entail a two-step process that includes an interview phase and an observation  
25 phase.”

*In re Sampson*, 197 Cal. App. 4th 1234, 1239 n.5 (June 30, 2011).

1 **D. Plaintiffs and Their Putative Classes**

2 Plaintiff Armando Osegueda is a thirty-five-year-old pretrial detainee. *Id.* ¶ 47. He was placed in  
3 the care and custody of the Sheriff’s Office on March 12, 2012. *Id.* ¶ 30. Osegueda was housed in the B-  
4 Max from October 17, 2012 until August 2016. *Id.* ¶ 31. Despite a Sheriff’s Office policy stating that all  
5 detainees are granted a classification review every three months, Osegueda did not receive a  
6 classification review for nearly four years while he was housed in the B-Max. *Id.* ¶ 32-33. In May 2016,  
7 Osegueda was granted a “downgrade packet,” but was never afforded the opportunity to challenge his  
8 classification or present his views regarding classification. *Id.* He was granted a green and white  
9 jumpsuit (which denotes administrative segregation) rather than the red and white jumpsuit (which  
10 denotes maximum security) that he had been wearing since his incarceration. *Id.* ¶ 34. In August 2016,  
11 Osegueda was moved into an active Norteño tank, but was returned to the B-Max, without warning or  
12 hearing, on January 20, 2017. *Id.* ¶ 35-36. As of January 30, 2017, Osegueda had not yet received a  
13 hearing or classification review regarding his return to the B-Max. *Id.* ¶ 37.

14 Plaintiff Robert Palomino is a forty-seven-year-old pretrial detainee. *Id.* ¶ 39, 47. He was placed  
15 into the care and custody of the Sheriff’s Office on February 26, 2013, and was housed in the B-Max  
16 from February 26, 2013 until May 2016. *Id.* ¶ 38. Palomino did not receive a classification review while  
17 he was in the B-Max and repeatedly requested to be downgraded. *Id.* ¶¶ 40-41. In or about May 2016,  
18 Palomino was pulled from his cell and escorted into a room with Defendants Shelton and Verver, and  
19 non-party Sergeant Martinez. *Id.* ¶ 42. Palomino had previously submitted a grievance, which Verver  
20 submitted to Defendant Lloyd. *Id.* Lloyd then decided to remove Palomino from the B-Max. *Id.*  
21 Palomino was subsequently granted a green and white jumpsuit, and was moved into an active Norteño  
22 tank. *Id.* ¶¶ 43-44. However, on January 20, 2017, Palomino was returned to the B-Max without warning  
23 or hearing, and as of January 30, 2017, Palomino has not received a classification review or hearing. *Id.*  
24 ¶¶ 45-46.

25 Plaintiff David Lomeli has been in the care and custody of the Sheriff’s Office since April 22,

1 2013. *Id.* ¶ 17. He denies any gang membership, has never received a classification review, and at all  
2 relevant times, has been housed in an active tank. *Id.*

3 Plaintiff Jairo Hernandez was in the care and custody of the Sheriff's Office from December 15,  
4 2015 through January 24, 2017, when the charges against him were dismissed. *Id.* ¶ 21. Hernandez was  
5 housed in an active tank. *Id.*

### 6 **E. Excessive Force Allegations**

7 Plaintiffs and those similarly situated are subjected to "excessive force" during "raids" and  
8 routine searches of their cells. *Id.* ¶ 96. When correctional officers and members decide to search inside  
9 an active tank, they use "flash bang" grenades on the tier before approaching the cells and shooting into  
10 the cell with shotguns or block guns while ordering detainees to get down. *Id.* ¶ 98-99. Because the  
11 doors are closed and locked, the correctional officers are not in any danger as they conduct these  
12 searches. *Id.*

13 In or about October 2012, when Osegueda was in an active tank, officers came inside his cell and  
14 shot pepper balls into it, spraying powder everywhere, despite there being no threat to the officers. *Id.* ¶  
15 100. The officers shouted obscenities at the detainees, handcuffed them, and took them to another room,  
16 where the detainees were strip searched and the cell was searched. *Id.*

17 In or about July 2013, pretrial detainees in the B-Max, including Osegueda and Palomino, were  
18 removed from their cells and placed in a concrete "yard" in only their boxers and were forced to remain  
19 on their knees with block guns pointed at them for hours. *Id.* ¶ 105. They were not permitted to move,  
20 shift, access restrooms or drink water while the cells in the B-Max were being searched. *Id.*

21 In or about June 2014, Osegueda and Palomino returned from court and entered the B-Max. *Id.* ¶  
22 102. Detainees were in the yard, on their knees, with guns pointed at them. *Id.* Osegueda and Palomino  
23 were stripped and placed in the yard on their knees, with guns pointed at them, for another one to two  
24 hours. *Id.*

25 In or about November 2014, members of the Correctional Emergency Response Team ("CERT")

1 entered the B-Max after dinner and told detainees to “cuff up” through the tray slot and threatened to  
2 shoot detainees if they shifted. *Id.* ¶ 103. The officers pointed guns and tasers at the detainees, who were  
3 moved to the multipurpose room or showers to be strip searched before being brought to the dayroom,  
4 where they remained for another two to three hours. *Id.*

5 In or about December 2015, Lomeli and Hernandez were housed in the active tank. *Id.* ¶ 104. At  
6 about 6:00 or 7:00 pm, Lomeli was in the dayroom watching television. *Id.* CERT members began to  
7 conduct a search and shot “pepper balls” and deployed a “flash-bang grenade” near the cell shared by  
8 Lomeli and Hernandez. *Id.* Hernandez was hit with shrapnel. *Id.* Lomeli backed up to get out of the way,  
9 but was struck by rounds in the neck and leg when he tried to duck behind the table. *Id.* There was no  
10 ongoing incident and no known threat to the officers, and no contraband was located. *Id.*

11 On or about January 29, 2017, at approximately 6:00 am, while Lomeli was sleeping in his cell  
12 in the active tanks, CERT members approached his cell and started shooting from outside the bars. *Id.* ¶  
13 106. Detainees were placed in mechanical restraints as officers searched the cell. *Id.*

#### 14 **PROCEDURAL BACKGROUND**

15 On January 17, 2017, the Court granted in part and denied in part Defendants’ motion to dismiss  
16 the FAC. ECF No. 21. Specifically, the Court found that the FAC had stated cognizable constitutional  
17 violations with regard to Fourteenth Amendment conditions of confinement and due process, dismissed  
18 the remaining claims and some of the originally named Defendants, and granted Plaintiffs leave to  
19 amend most of their claims. *Id.* at 22-23.

20 In the SAC, Plaintiffs now bring four constitutional claims based on the allegations described  
21 above: conditions of confinement, due process, equal protection, and excessive force. ECF No. 22. The  
22 SAC also re-asserts *Monell* liability against the Sheriff’s Office and PSC. *Id.* Plaintiffs seek monetary  
23 damages, punitive damages, declaratory relief, and injunctive relief. *Id.* at 27-28.

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## STANDARD OF DECISION

1  
2 A motion to dismiss pursuant to Rule 12(b)(6) is a challenge to the sufficiency of the allegations  
3 set forth in the complaint. Dismissal under Rule 12(b)(6) is proper where there is either a “lack of a  
4 cognizable legal theory” or “the absence of sufficient facts alleged under a cognizable legal theory.”  
5 *Balisteri v. Pacifica Police Dept.*, 901 F.2d 696, 699 (9th Cir. 1990). In considering a motion to dismiss  
6 for failure to state a claim, the court generally accepts as true the allegations in the complaint, construes  
7 the pleading in the light most favorable to the party opposing the motion, and resolves all doubts in the  
8 pleader’s favor. *Lazy Y. Ranch LTD v. Behrens*, 546 F.3d 580, 588 (9th Cir. 2008).

9 To survive a 12(b)(6) motion to dismiss, the plaintiff must allege “enough facts to state a claim  
10 to relief that is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). “A claim  
11 has facial plausibility when the Plaintiff pleads factual content that allows the court to draw the  
12 reasonable inference that the defendant is liable for the misconduct alleged.” *Ashcroft v. Iqbal*, 556 U.S.  
13 662, 678 (2009). “The plausibility standard is not akin to a ‘probability requirement,’ but it asks for  
14 more than a sheer possibility that a defendant has acted unlawfully.” *Id.* (quoting *Twombly*, 550 U.S. at  
15 556). “While a complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual  
16 allegations, a plaintiff’s obligation to provide the ‘grounds’ of his ‘entitlement to relief’ requires more  
17 than labels and conclusions.” *Twombly*, 550 U.S. at 555 (internal citations omitted). Thus, “bare  
18 assertions . . . amount[ing] to nothing more than a ‘formulaic recitation of the elements’ . . . are not  
19 entitled to be assumed true.” *Iqbal*, 556 U.S. at 681. “[T]o be entitled to the presumption of truth,  
20 allegations in a complaint . . . must contain sufficient allegations of underlying facts to give fair notice  
21 and to enable the opposing party to defend itself effectively.” *Starr v. Baca*, 652 F.3d 1202, 1216 (9th  
22 Cir. 2011). In practice, “a complaint . . . must contain either direct or inferential allegations respecting  
23 all the material elements necessary to sustain recovery under some viable legal theory.” *Twombly*, 550  
24 U.S. at 562. To the extent that the pleadings can be cured by the allegation of additional facts, a plaintiff  
25 should be afforded leave to amend. *Cook, Perkiss and Liehe, Inc. v. Northern Cal. Collection Serv., Inc.*,

1 911 F.2d 242, 247 (9th Cir. 1990) (citations omitted).

2 In ruling on a Rule 12(b)(6) motion, “[a] court may take judicial notice of [undisputed] matters  
3 of public record’ without converting a motion to dismiss into a motion for summary judgment.” *Lee v.*  
4 *City of Los Angeles*, 250 F.3d 668, 689 (9th Cir. 2001); *see also Tellabs, Inc. v. Makor Issues & Rights,*  
5 *Ltd.*, 551 U.S. 308, 322 (2007) (“courts must consider the complaint in its entirety, as well as other  
6 sources courts ordinarily examine when ruling on Rule 12(b)(6) motions to dismiss, in particular,  
7 documents incorporated into the complaint by reference, and matters of which a court may take judicial  
8 notice.”). Moreover, the court is permitted to consider matters that are proper subjects of judicial notice  
9 under Federal Rule of Evidence 201: facts that are not subject to reasonable dispute because they are  
10 “generally known within the trial court’s territorial jurisdiction” or “can be accurately and readily  
11 determined from sources whose accuracy cannot reasonably be questioned.” *See Lee*, 250 F.3d at 668.

## 12 DISCUSSION

### 13 **I. Request for Judicial Notice**

14 Defendants have asked that this Court take judicial notice of section 1065 of Title 15 of the  
15 California Code of Regulations, which pertains to the exercise and recreation programs in correctional  
16 facilities. ECF No. 23-2. Plaintiffs do not oppose this request. Because California regulations are  
17 undisputed matters of public record, the Court GRANTS Defendants’ request.

### 18 **II. The Addition of Lomeli and Hernandez as Plaintiffs**

19 Defendants argue that the SAC’s addition of David Lomeli and Jairo Hernandez as plaintiffs in  
20 this case is not permissible because the Court’s prior order, ECF No. 21, did not grant leave to amend to  
21 add additional parties and new claims. ECF No. 23-1 at 16-17. Furthermore, Defendants argue that  
22 Lomeli and Hernandez’s claims must be dismissed because, *inter alia*, Lomeli and Hernandez’s claims  
23 do not arise out of the same transaction, occurrence, or series of transactions or occurrences that  
24 Osegueda and Palomino placed at issue, and because their claims do not involve common issues of law  
25 and fact within the meaning of Rule 20. *Id.* at 17.

1 According to Plaintiffs' opposition, they assert that the joinder of Lomeli and Hernandez was  
2 proper because they had previously specifically requested leave to amend in relation to their excessive  
3 force claim, and "[i]t is Plaintiffs' belief that it was inherent in this Court's July 17, 2017 [sic] Order  
4 granting [sic] leave to amend their excessive force claim, that the Court was also granting Plaintiffs'  
5 request to add David Lomeli and Jairo Hernandez as additional named Plaintiffs." ECF No. 25 at 28-29.

6 Under Rule 20(a)(1), persons may join in an action as plaintiffs if "they assert any right to relief  
7 jointly, severally, or in the alternative with respect to or arising out of the same transaction, occurrence,  
8 or series of transactions or occurrences" and "any question of law or fact common to all plaintiffs will  
9 arise in the action." Furthermore, "[e]ven [if] these requirements are met, a district court must examine  
10 whether permissive joinder would 'comport with the principles of fundamental fairness' or would result  
11 in prejudice to either side." *Coleman v. Quaker Oats Co.*, 232 F.3d 1271, 1296 (9th Cir. 2000) (citing  
12 *Desert Empire Bank v. Insurance Co. of N. Am.*, 623 F.2d 1371, 1375 (9th Cir. 1980)).

13 In its January 17, 2017 Order, the Court dismissed Plaintiffs' Eighth Amendment excessive force  
14 claim with leave to amend, because the allegations in the First Amended Complaint ("FAC") were too  
15 vague for the Court to evaluate the claim. ECF No. 21 at 18. The SAC has attempted to cure the  
16 deficiencies the Court identified in the FAC through additional excessive force allegations brought on  
17 behalf of Lomeli and Hernandez, in addition to allegations relating to Osegueda and Palomino. Because  
18 the Court granted Plaintiffs leave to amend their excessive force claim, and upon the Court's review of  
19 the SAC, Lomeli and Hernandez, like Osegueda, have brought excessive force allegations related to  
20 their housing in an active tank, the Court finds that the joinder of Lomeli and Hernandez is proper under  
21 Rule 20 because their claims are related. Accordingly, the Court will consider their allegations in  
22 evaluating Plaintiffs' excessive force claim.

### 23 **III. Constitutional Violations**

24 As in its previous Order, the Court will first address whether Plaintiffs have alleged facts that  
25 could plausibly support constitutional claims before addressing liability as to the Defendants.

1           **A. First Cause of Action: Fourteenth Amendment -- Conditions of Confinement**

2           The SAC repeats the allegations<sup>7</sup> contained in the FAC pertaining to Plaintiffs 1) being housed in  
3 the B-Max on account of being classified as Norteño or Northern Hispanic gang members; 2) being  
4 housed in the B-Max as a means to coerce them into providing information or accepting pleas; 3) having  
5 limited access to telephones; 4) being subjected to sensory deprivation; and 5) being denied adequate  
6 opportunities for outdoor exercise. Furthermore, in their motion to dismiss Plaintiffs' conditions of  
7 confinement claim, Defendants raise for the first time an argument that the length of Plaintiffs' pretrial  
8 detention does not state a claim. ECF No. 23-1 at 22-3.

9                           **i. Claims Previously Dismissed With Leave to Amend**

10           The Court's January 17, 2017 Order dismissed with leave to amend the first, second, and third of  
11 the allegations listed above. *Id.* at 7 n.5, 10, 11. Although Plaintiffs were granted leave to amend these  
12 allegations, the SAC does not add any more substantive factual allegations that render these allegations  
13 cognizable. Indeed, for the most part, the allegations in the SAC repeat verbatim what is contained in the  
14 FAC with regards to Plaintiffs' Fourteenth Amendment conditions of confinement claim. *Compare* FAC  
15 ¶¶ 76-86 with SAC ¶¶ 107-127.<sup>8</sup>

16           Regarding Plaintiffs' reiterated housing and classification claims, Defendants note that the SAC  
17 fails to allege any additional facts that could remedy the deficiencies identified by the Court in its  
18 previous Order, such as Palomino's or Osegueda's criminal charges being changed or dismissed such  
19 that it could affect their classification. ECF No. 21-1 at 20. The section in Plaintiffs' opposition brief  
20 purporting to address housing and classification as it relates to their Fourteenth Amendment conditions

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22 <sup>7</sup> The SAC also repeats allegations pertaining to Plaintiffs being denied access to vocational, educational, and rehabilitative  
23 programs. SAC ¶ 112. The Court's January 17, 2017 Order dismissed this allegation without leave to amend. ECF No. 21 at  
24 10-11. The Court now reiterates its previous determination that this allegation is incurably deficient, for the reasons set forth  
25 in its January 17, 2017 Order. *See id.* To be clear, Plaintiffs' allegations regarding access to vocational, education, and  
rehabilitative programs are DISMISSED WITHOUT LEAVE TO AMEND.

<sup>8</sup> The main difference between the FAC's allegations and the SAC's allegations of Plaintiff's conditions of confinement claim is in the numbering of the paragraphs.

1 of confinement claim contains citations to cases mostly relating to due process claims rather than  
2 conditions of confinement, *see* ECF No. 25 at 22-23, and fails to rebut Defendants’ arguments. The  
3 Court therefore sees no reason to depart from its prior determination that the decision to house Plaintiffs  
4 separately from other pre-trial detainees was warranted and served a legitimate, governmental objective  
5 of maintaining security and order in the PSC, for purposes of a Fourteenth Amendment conditions of  
6 confinement claim.

7       Regarding the allegations that detainees in the B-Max are denied access to their telephones, the  
8 Court notes that it cited the Ninth Circuit’s holding that “[a]lthough prisoners have a First Amendment  
9 right to telephone access, this right is subject to reasonable limitations arising from the legitimate  
10 penological administrative interests of the prison system” in dismissing this allegation for failure to state  
11 a claim. *Id.* at 11 (citing *Johnson v. State of Cal.*, 207 F.3d 650, 656 (9th Cir. 2000)). Like the FAC, the  
12 SAC alleges that B-Max detainees are allowed three hours per week of “yard time,” during which they  
13 have access to a telephone. SAC ¶ 64. It further alleges that telephones are “readily available” to all  
14 groups aside from B-Max detainees, including men housed in the active tanks. *Id.* ¶ 110. This additional  
15 allegation does not alter the Court’s previous determination that B-Max detainees’ access to telephones  
16 is not in violation of the Fourteenth Amendment.

17       Similarly, the SAC’s additional allegations regarding Defendants’ alleged use of the B-Max to  
18 coerce detainees into becoming informants or accepting plea deals<sup>9</sup> are materially identical to those in  
19 the FAC. *Compare* SAC ¶¶ 115-118 with FAC ¶¶ 82-84.<sup>10</sup> The Court’s January 17, 2017 Order found  
20 that these allegations did not fit within the parameters of a Fourteenth Amendment conditions of  
21

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22 <sup>9</sup> In both the FAC and the SAC, Plaintiffs state that a court has found it “tantamount to indefinite administrative segregation  
23 for silence – an intolerable practice in modern society.” FAC ¶ 82; SAC ¶ 116. The FAC listed “Griffin, No. C-98-21038 at  
24 11” as the source for this quotation, and the SAC does not provide a citation. *See id.* Plaintiffs’ counsel is advised to provide  
25 proper citations in the future.

<sup>10</sup> In relation to this claim, the only difference between the FAC and the SAC is that the content of the FAC in paragraph 82  
is broken up into two paragraphs (115 and 116) in the SAC, and the SAC does not include a citation for a quotation that the  
FAC includes.

1 confinement claim and therefore dismissed them with leave to amend. ECF No. 21 at 7 n.5.

2 Furthermore, as noted by Defendants in their motion, the SAC's allegations are "non-descript"  
3 and "impermissibly conclusory to be accepted as true, and violate Rule 8 pleading standards," given that  
4 there are no allegations in the SAC that "any named Defendant ever approached either [Osegueda or  
5 Palomino] and requested they take a plea deal or debrief in exchange for a housing assignment change."  
6 See ECF No. 23-1 at 21. Defendants additionally observe that moving an inmate who has dropped out  
7 from a gang into alternate housing for that inmate's safety is in accordance with the Ninth Circuit's  
8 holding in *Madriz v. Gomez*, which states that "administrative segregation may properly be used to  
9 protect the prisoner's safety," and would be within the authority of California's prison administrators to  
10 implement a classification and housing plan to ensure the safety of all inmates. See 889 F. Supp. 1146,  
11 1272 (N.D. Cal. 1995); see also 15 C.C.R. § 1050(a) (authorizing California prison administrators to  
12 "develop and implement a written classification plan designed to properly assign inmates to housing  
13 units and activities according to the categories of sex, age, criminal sophistication, seriousness of  
14 crime charged, physical or mental health needs, assaultive/non-assaultive behavior and other criteria  
15 which will provide for the safety of the inmates and staff."). Plaintiffs' nonsensical argument in their  
16 opposition brief that "Defendants [sic] alleged statements that if Plaintiffs debrief they will be moved to  
17 less restrictive conditions belays [sic] any argument that Plaintiffs [sic] placement is related to any  
18 appropriate penological reasons," ECF No. 25 at 23, fails to convince the Court otherwise.

19 Despite being granted leave to amend these allegations, Plaintiffs failed to do so meaningfully.  
20 Accordingly, the Court GRANTS Defendants' motion to dismiss Plaintiffs' Fourteenth Amendment  
21 conditions of confinement claims insofar as it relates to their classification as Norteños causing them to  
22 be placed in the B-Max, telephone access, and Defendants' purported coercion of Plaintiffs through  
23 housing in the B-Max. Dismissal shall be with prejudice.

#### 24 **ii. Outdoor Exercise and Sensory Deprivation**

25 The Court's January 17, 2017 Order found that Plaintiffs had stated cognizable Fourteenth

1 Amendment conditions of confinement claims in relation to their allegations that Defendants had  
2 subjected them to sensory deprivation and did not provide them with adequate opportunities for outdoor  
3 exercise. ECF No. 21 at 11-12. Defendants now move to dismiss Plaintiffs' exercise claim on the  
4 grounds of qualified immunity, arguing that because the SAC alleges that Plaintiffs are afforded three  
5 hours of exercise per week, and California prison regulations provide that three hours of exercise per  
6 week is lawful, Defendants' actions relating to Plaintiffs' access to exercise were lawful. ECF No. 23-1  
7 at 24-25.

8 In their opposition brief, Plaintiffs contend that their exercise allegations survive Defendants'  
9 motion to dismiss, noting that the SAC does not actually state that Plaintiffs are afforded three hours of  
10 exercise, but rather, that they are afforded three hours of "yard" time in an enclosed concrete cell that  
11 does not allow in unobstructed sunlight or filtered air, and that lacks any exercise or recreational  
12 equipment. ECF No. 25 at 20.

13 Upon review of the pleadings and the relevant case law, the Court agrees with Plaintiffs.  
14 "[E]xercise has been determined to be one of the basic human necessities protected by the Eighth  
15 Amendment, and a long-term deprivation of outdoor exercise for inmates is unconstitutional." *Hearns v.*  
16 *Terhune*, 413 F.3d 1036, 1042 (9th Cir. 2005) (internal quotation marks and citations omitted) (emphasis  
17 added). Furthermore, "[s]ensory deprivation or excessive limitation of activity may constitute an Eighth  
18 Amendment violation." *Baumann v. Ariz. Dept. of Corr.*, 654 F. 2d 841, 846 (9th Cir. 1985).  
19 Defendants' arguments regarding qualified immunity in both their motion brief (ECF No. 23-1 at 23-25)  
20 and reply (ECF No. 26 at 7) fail to address the allegations in the SAC that the "yard" time afforded to  
21 Plaintiffs does not actually provide them with the opportunity to exercise outside, and that Plaintiffs'  
22 only exposure to the outdoors occurs during their walks to and from transportation taking them to the  
23 courthouse. *See* SAC ¶¶ 63-64, 92, 95. The Court's reasoning and determination in it January 17, 2017  
24 Order that Plaintiffs have sufficiently alleged a constitutional harm and that Defendants' conduct was  
25 objectively unreasonable in failing to rectify the lack of opportunity for detainees to exercise outdoors

1 and their sensory deprivation remain valid at this stage of proceedings. The Court therefore DENIES  
2 Defendants' motion to dismiss Plaintiffs' Fourteenth Amendment conditions of confinement claims  
3 regarding outdoor exercise and sensory deprivation.<sup>11</sup>

#### 4 **B. Second Cause of Action: Fourteenth Amendment -- Due Process**

5 The Court previously found that Plaintiffs had stated a cognizable Fourteenth Amendment due  
6 process claim, given that they had alleged that they were never given a chance to present their views  
7 before they were housed in the B-Max or shortly thereafter, and that they did not receive classification  
8 reviews until more than three years after their arrival at PSC. ECF No. 21 at 13-14. The SAC makes  
9 additional allegations related to this claim—notably that on January 20, 2017, both Palomino and  
10 Osegueda were both moved to the B-Max without warning, and as of January 30, 2017, neither had  
11 received classification reviews. SAC ¶¶ 35-37; 44-46.

12 Defendants' motion to dismiss does not appear to seek dismissal of Plaintiffs' Fourteenth  
13 Amendment due process claim, as it does not meaningfully address this claim in a specific manner.  
14 Therefore, for the reasons stated in the Court's January 17, 2017 Order, the Court finds that Plaintiffs

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15  
16 <sup>11</sup> In their motion, Defendants additionally argue that the SAC fails state a cognizable conditions of confinement claim based  
17 on the alleged length of Plaintiffs' detention in the B-Max, noting that the SAC alleges that the length of pre-trial detention in  
18 the B-Max strips detainees of "basic human dignity," and that "[v]irtually no other county or state uses mere alleged gang  
association or memberships to confine prisoners in SHU facilities." ECF No. 23-1 at 22-23. Defendants note that that the  
SAC does not define the term "SHU," despite using it repeatedly. *Id.* Like Defendants, the Court will assume that by "SHU,"  
Plaintiffs mean "secure housing unit" and are using the term "SHU" as a proxy for B-Max confinement.

19 As the Court understands the SAC, Plaintiffs' allegations regarding the length of their confinement in the B-Max extending  
20 over three to four years are not pleaded as a discrete conditions of confinement claim, but rather are allegations that provide  
factual support and context for their outdoor exercise and sensory deprivation claims. *See, e.g., Hutto v. Finley*, 437 U.S. 678,  
686-87 (1978) ("the length of confinement cannot be ignored in deciding whether the confinement meets constitutional  
standards. A filthy, overcrowded cell ... might be tolerable for a few days and intolerably cruel for weeks or months.");  
21 *Norwood v. Vance*, 591 F.3d 1062, 1070 (9th Cir. 2009) (internal citations omitted) ("Although exercise is 'one of the basic  
human necessities protected by the Eighth Amendment ... a temporary denial of outdoor exercise with no medical effects is  
22 not a substantial deprivation.").

23 Plaintiffs have alleged that they were deprived the opportunity to exercise outdoors for three years (Palomino) and four years  
(Osegueda). Thus, the length of time that Plaintiffs allege they have been deprived of outdoor exercise as a normal condition  
of their confinement undoubtedly raises a "substantial constitutional question." *See, e.g., Toussaint v. Yockey*, 722 F.2d 1490,  
24 1493 (9th Cir. 1984) (inmate assigned to administrative segregation for over one year who had been denied outdoor exercise  
during that time raised "substantial constitutional question."); *Spain v. Procunier*, 600 F.2d 189, 199-200 (9th Cir. 1979)  
25 (finding an Eighth Amendment violation where inmates in disciplinary segregation were denied outdoor exercise for four and  
a half years).



1 have stated a cognizable Fourteenth Amendment due process claim through their allegations that they  
2 were not provided the timely classification reviews required by law. *See Lira v. Herrera*, 448 F. App'x  
3 699, 701 (9th Cir. 2011) (quoting *Hewitt v. Helms*, 459 U.S. 460, 476 (1983)) (“When a prisoner is to be  
4 administratively segregated, due process requires that he receive ‘some notice’ of the charges and ‘an  
5 opportunity to present his views to the prison official charged with deciding whether to transfer him to  
6 administrative segregation.’”); *see also Toussaint v. McCarthy*, 926 F.2d 800, 803 (9th Cir.1990)  
7 (upholding a district court order requiring a hearing on prison official’s decision to segregate inmate).

8         Furthermore, the Court’s previous Order declined to address whether Plaintiffs’ claims regarding  
9 Defendants’ failure to provide them with notice as to how they might be permitted to rejoin the general  
10 detainee population and periodic classification reviews. ECF No. 21 at 13 n.8. Upon review of the  
11 relevant law, the Court finds that Plaintiffs’ allegations that Defendants denied them periodic  
12 classification reviews to which they were entitled also constitute a Fourteenth Amendment due process  
13 claim. *See Santos v. Grounds*, No. C 08-3100 JSW (PRS), 2009 WL 839032, at \*2 (N.D. Cal. Mar. 30,  
14 2009) (citing *Hewitt v. Helms*, 459 U.S. 460, 477 n. 9); *Toussaint*, 801 F.2d 1080, 1101 (9th Cir. 1986);  
15 and *Toussaint v. Rowland*, 711 F. Supp. 536, 540 n. 11 (N.D. Cal. 1989)) (“Where a prisoner is confined  
16 to administrative segregation for an indeterminate period of time, prison officials must engage in some  
17 sort of periodic review of his confinement ... which must amount to more than ‘meaningless  
18 gestures.’”).

19         However, there is no legal support for Plaintiffs’ argument that Defendants’ failure to provide  
20 Plaintiffs with notice regarding how to rejoin the general population violates due process. The due  
21 process standard “is met if prison officials hold an informal nonadversary hearing within a reasonable  
22 time after the prisoner is segregated, inform the prisoner of the charges against him or the reasons  
23 segregation is being considered, and allow the prisoner to present his views” and “an evidentiary basis  
24 exist[s] for a prison official’s decision to place an inmate in segregation for administrative reasons.”  
25 *Santos*, 2009 WL 839032, at \*2. Because there is no mention that Defendants are required to provide

1 Plaintiffs with the notices described in the SAC, the Court finds that this allegation does not state a due  
2 process violation.

3 Therefore, to be clear, Plaintiffs' allegations that they were denied timely classification reviews  
4 upon their initial placement in the B-Max and periodic classification reviews in the time that followed  
5 state a cognizable Fourteenth Amendment due process violation, and they may proceed on this claim.

6 **C. Third Cause of Action: Fourteenth Amendment -- Equal Protection**

7 The Court previously granted Defendants' motion to dismiss Plaintiffs' Fourteenth Amendment  
8 equal protection claim on the ground that Plaintiffs had failed to allege that they suffered discrimination  
9 on account of a protected class, as they had alleged that the disparate treatment they experienced was on  
10 account of their classification as Norteño and/or Northern Hispanic gang members, and gang  
11 membership is not a protected class within the meaning of the Equal Protection Clause. ECF No. 21 at  
12 14-15.

13 Defendants again seek dismissal of Plaintiffs' equal protection claim on the same grounds cited  
14 in the Court's January 17, 2017 Order. ECF No. 23-1 at 18-19. However, the SAC's allegations of this  
15 equal protection claim are noticeably different from those in the FAC that were dismissed. Significantly,  
16 the SAC alleges that the Sheriff's Office discriminates against inmates of Hispanic descent, who are  
17 denied access to rehabilitative programming, while inmates of other races, even those who are alleged to  
18 be members of the Aryan Brotherhood, Skinheads, Nazi Lowriders, Juggalos, Crips, and Bloods, are  
19 afforded. SAC ¶ 139. The SAC additionally alleges that alleged members of these non-Hispanic gangs  
20 are housed with the "general population" and afforded "all privileges including freedom of movement,  
21 more time out of their cells, outdoor yard, educational, rehabilitative, and vocational programs." *Id.* ¶  
22 140. In Plaintiffs' opposition brief, they further explain that the SAC "does not base the alleged  
23 constitutional violation on the fact that the Plaintiffs are alleged gang members, but rather, sets forth  
24 equal protection claims based on the fact that alleged Hispanic gang members are treated differently  
25 [from] non-Hispanic gangs and gang members." ECF No. 25 at 24. "Stated somewhat differently,

1 Plaintiffs allege in their SAC that the classification policy of the [Sheriff’s Office] is nothing more than  
2 government-imposed racial classification” that denies Plaintiffs’ rehabilitative programming on account  
3 of their race. *Id.*

4 “The fundamental principle that prisoners are protected from race discrimination is longstanding:  
5 ‘Prisoners are protected under the Equal Protection Clause of the Fourteenth Amendment from invidious  
6 discrimination based on race.’” *Harrington v. Scribner*, 785 F.3d 1299, 1305 (9th Cir. 2015) (quoting  
7 *Wolff v. McDonell*, 418 U.S. 539, 556 (1974)). Accordingly, the Supreme Court has held that racial  
8 classifications in prisons, as in virtually all other contexts, are subject to strict scrutiny, reasoning that  
9 “[t]he right not to be discriminated against ... is not a right that need necessarily be compromised for the  
10 sake of proper prison administration.” *Johnson v. California*, 543 U.S. 499, 510 (2005). “[C]ompliance  
11 with the Fourteenth Amendment’s ban on racial discrimination is not only consistent with proper prison  
12 administration, but also bolsters the legitimacy of the entire criminal justice system. Race discrimination  
13 is especially pernicious in the administration of justice ... [a]nd public respect for our system of justice  
14 is undermined when the system discriminates based on race.” *Id.* at 510-11 (internal citations omitted).  
15 “When government officials are permitted to use race as a proxy for gang membership and violence  
16 without demonstrating a compelling government interest and providing that their means are narrowly  
17 tailored, society as a whole suffers.” *Id.* at 511.

18 The Equal Protection Clause directs that “all persons similarly situated should be treated alike.”  
19 *City of Cleburne, Tex. v. Cleburne Living Ctr.*, 472 U.S. 432, 439 (1985). Thus, to state a cognizable  
20 equal protection claim, Plaintiffs “must show that [Defendants] acted with an intent or purpose to  
21 discriminate against [them] based upon [their] membership in a protected class.” *Serrano v. Francis*,  
22 345 F.3d 1071, 1082 (9th Cir. 2003) (citation omitted). “Intentional discrimination means that a  
23 defendant acted at least in part *because of* a plaintiff’s protected status.” *Maynard v. City of San Jose*, 37  
24 F.3d 1396, 1404 (9th Cir. 1994) (emphasis in original). The first step in an equal protection analysis is to  
25 identify “the Defendants’ asserted classification of groups,” and “[t]he groups must be comprised of

1 similarly situated persons so that the factor motivating the alleged discrimination can be identified.”

2 *Thorton v. City of St. Helens*, 425 F.3d 1158, 1166-67 (9th Cir. 2005).

3 Here, the Court finds that Plaintiffs have stated a cognizable equal protection claim because the  
4 SAC alleges sufficient facts, as described above, to warrant a plausible inference that they were  
5 intentionally discriminated against on the basis of their race. The Court is cognizant that gang  
6 membership is not a protected class within the meaning of the Equal Protection Clause. *See Mitchell v.*  
7 *Cate*, No. 2:11-cv-1240 JAM AC P, 2015 WL 5255339, at \*7 (E.D. Cal. Sept. 9, 2015). Nevertheless,  
8 the SAC’s allegations that inmates who allegedly belong to gangs not associated with Hispanic ethnicity  
9 (e.g., the Aryan Brotherhood, Skinheads, Juggalos, Crips, Bloods) are treated better and differently from  
10 those who have been classified as Norteño or Northern Hispanic, without any compelling government  
11 interest for this disparate treatment, and that Stanislaus County uses a list of “hazard codes” and only  
12 assigns these codes to Hispanic gangs, but does not assign codes to non-Hispanic gangs, are sufficient to  
13 survive Defendants’ Rule 12(b)(6) motion. The SAC alleges that Hispanic inmates are treated differently  
14 from their similarly-situated peers who are members of other gangs associated with non-Hispanic racial  
15 groups on account of their race, and that suspicion that an inmate is a Norteño gang member is a proxy  
16 for racial discrimination. *Id.* ¶¶ 139-140. Defendants’ reply brief does not address this argument. *See*  
17 ECF No. 26 at 6. The Court agrees with Plaintiffs that the SAC has sufficiently alleged that Defendants  
18 intentionally discriminate against Hispanic detainees, and the allegations that Hispanic inmates are  
19 disproportionately housed in the B-Max and are denied access to rehabilitative programming provides  
20 factual support for Plaintiffs’ equal protection claim. Therefore, the Court DENIES Defendant’s motion  
21 to dismiss Plaintiffs’ equal protection claim.<sup>12</sup>

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22  
23 <sup>12</sup> This finding is not inconsistent with the Court’s prior determination that the decision to house Plaintiffs in the B-Max on  
24 account of the crimes they were charged with served a legitimate purpose and was within the authority of PSC officials. It is  
25 beyond dispute that detainees do not have a constitutional right to a particular classification status and that California law  
authorizes prison and jail administrators to classify and house inmates in a manner that maintains security in the facility.  
However, because the SAC has alleged that Defendants purposefully discriminate against suspected Norteños and treat them  
less favorably than non-Hispanic detainees who may belong to other gangs, the SAC states an equal protection claim.

1           **D. Fourth Cause of Action: Fourteenth Amendment -- Excessive Force**

2           The Court previously granted Defendants' motion to dismiss Plaintiffs' excessive force claim on  
3 the ground that the FAC's allegations were too vague and conclusory, and therefore not entitled to the  
4 presumption of truth. ECF No. 21 at 17-18.

5           Defendants argue that the SAC suffers from the same defects as the FAC, notwithstanding the  
6 fact that the SAC includes new allegations from Lomeli and Hernandez, and provides specific dates as  
7 to when the Plaintiffs allegedly experienced excessive force. ECF No. 23-1 at 26-27. They argue that the  
8 SAC, despite these new allegations, nevertheless fails to allege any physical injury to any Plaintiff, and  
9 therefore fails to state an excessive force claim. *Id.*

10           As the parties are well aware, in *Kingsley v. Hendrickson*, 135 S.Ct. 2466, 2473 (2015), the  
11 Supreme Court provided a list of non-exhaustive factors to consider when determining whether force  
12 was "objectively unreasonable" in violation of the Fourteenth Amendment. These factors include "the  
13 relationship between the need for the use of force and the amount of force used; the extent of the  
14 plaintiff's injury; any effort made by the officer to temper or to limit the amount of force; the severity of  
15 the security problem at issue; the threat reasonably perceived by the officer; and whether the plaintiff  
16 was actively resisting." *Id.* (citing *Graham v. Connor*, 490 U.S. 386, 396 (1989)).

17           Under this standard, the Court now turns to the excessive force allegations in the SAC, which  
18 lists several different instances during which Plaintiffs allege that they were subjected to excessive  
19 force. The Court agrees with Defendants that the two-year statute of limitations bars the Court's  
20 consideration of the events that occurred in October 2012, July 2013, and June 2014, given that this case  
21 was commenced on August 16, 2016. *See Jones v. Blanas*, 393 F.3d 918, 927 (9th Cir.2004) ("For  
22 actions under 42 U.S.C. § 1983, courts apply the forum state's statute of limitations for personal injury  
23 actions, along with the forum state's law regarding tolling, including equitable tolling, except to the  
24 extent any of these laws is inconsistent with federal law."); Cal. Code Civ. Proc. § 335.1 (California's  
25 statute of limitations for personal injury actions is two years). The Court's consideration of Plaintiffs'

1 excessive force claims is therefore confined to the instances alleged to have occurred on November  
2 2014, December 2015, and January 2017.

3 The November 2014 allegations fail to state an excessive force claim. *See* SAC ¶ 103. As  
4 Defendants point out, the amount of force used does not appear to be objectively unreasonable and the  
5 SAC fails to allege any physical injury at all to any Plaintiffs, “given the obvious administrative and  
6 security needs of the jail.” ECF No. 23-1 at 27.

7 For similar reasons, the January 2017 allegations also fail to state an excessive force claim. *See*  
8 SAC ¶ 106. As with the November 2014 allegations, no Plaintiff is alleged to have suffered any injury.  
9 *See id.* Furthermore, given that CERT team officials were conducting a search of the cells, it does not  
10 appear to be objectively unreasonable to restrain the detainees during the search.

11 However, the December 2015 allegations do state an excessive force claim. *See* SAC ¶ 104.  
12 Although CERT team officials were conducting a search of the cells, employing a flash-bang grenade  
13 and shooting pepper balls into the cells that caused specific injuries to Plaintiffs Hernandez and Lomeli  
14 does appear to be objectively unreasonable, in light of the allegations that there was no ongoing incident  
15 and no known threat to officers, no effort by the officers to temper their amount of force, and no effort  
16 by any of the Plaintiffs to resist.

17 For these reasons, the Court DENIES Defendants’ motion to dismiss Plaintiffs’ excessive force  
18 claim relating to the December 2015 incident, but GRANTS it in all other respects without leave to  
19 amend.

#### 20 **IV. Liability**

21 Having determined that the SAC has stated facts that could support cognizable constitutional  
22 violations with regard to Plaintiffs’ conditions of confinement, due process, equal protection, and  
23 excessive force claims, the Court now turns to the issue of liability. 42 U.S.C. § 1983 requires that there  
24 be an actual connection or link between the actions of Defendants and the deprivations alleged to have  
25 been suffered by Plaintiffs. *See Monell v. Dept. of Social Servs.*, 436 U.S. 658 (1978). The Ninth Circuit

1 has held that “[a] person ‘subjects’ another to the deprivation of a constitutional right, within the  
2 meaning of section 1983, if he does an affirmative act, participates in another’s affirmative acts or omits  
3 to perform an act which he is legally required to do that causes the deprivation of which complaint is  
4 made.” *Johnson v. Duffy*, 588 F.2d 740, 743 (9th Cir. 1978). In order to state a claim for relief under §  
5 1983, Plaintiffs must link each named Defendant with some affirmative act or omission that  
6 demonstrates a violation of Plaintiffs’ federal rights. Plaintiffs must specify which Defendant(s) is  
7 allegedly responsible for each violation of his constitutional rights and the factual basis of his Complaint  
8 must put each Defendant on notice of Plaintiffs’ claims against him. *See Austin v. Terhune*, 367 F.3d  
9 1167, 1171 (9th Cir. 2004).

10 “Personal-capacity suits seek to impose personal liability upon a government official for actions  
11 he takes under color of state law.” *Kentucky v. Graham*, 473 U.S. 159, 165 (1985). To establish personal  
12 liability pursuant to § 1983, “it is enough to show that the official, acting under color of state law,  
13 caused the deprivation of a federal right.” *Id.* Furthermore, when a named defendant holds a supervisory  
14 position, the causal link between him and the claimed constitutional violation must be specifically  
15 alleged. *See Fayle v. Stapley*, 607 F.2d 858, 862 (9th Cir. 1979). To state a claim for relief under § 1983  
16 based on a theory of supervisory liability, Plaintiffs must allege some facts that would support a claim  
17 that supervisory Defendants either: personally participated in the alleged deprivation of constitutional  
18 rights; knew of the violations and failed to act to prevent them; or promulgated or “implemented a  
19 policy so deficient that the policy ‘itself is a repudiation of constitutional rights’ and is ‘the moving force  
20 of the constitutional violation.’” *Hansen v. Black*, 885 F.2d 642, 646 (9th Cir.1989) (internal citations  
21 omitted). Under § 1983, liability may not be imposed on supervisory personnel for the actions of their  
22 employees under a theory of respondeat superior. *Iqbal*, 556 U.S. at 677. “In a § 1983 suit or a *Bivens*  
23 action—where masters do not answer for the torts of their servants—the term ‘supervisory liability’ is a  
24 misnomer.” *Id.* Knowledge and acquiescence of a subordinate’s misconduct is insufficient to establish  
25 liability; each government official is only liable for his or her own misconduct. *Id.*

1 Official-capacity suits “generally represent only another way of pleading an action against an  
2 entity of which an officer is an agent.” *Monell*, 436 U.S. at 690 n. 55. Pleading official-capacity liability  
3 requires more from a plaintiff than pleading personal-capacity liability. *Kentucky*, 473 U.S. at 166.  
4 Because an official-capacity suit against a government employee is essentially an action against the  
5 entity, Plaintiffs must plead that the entity itself was a “moving force” behind the constitutional  
6 deprivation they suffered, and that the entity’s “policy or custom” played a part in the violation of  
7 federal law.” *Id.*

8 **A. Individual Defendants**<sup>13</sup>

9 The SAC lists the following six individual Defendants in connection with its four cognizable  
10 claims: 1) Christianson, the elected Stanislaus County Sheriff; 2) Duncan, PSC’s Facilities Captain; 3)  
11 Clifton, PSC’s Facilities Commander; 4) Lloyd, Captain of PSC’s Correctional Emergency Response  
12 Team and the Commander of the Facility Training Officer Program; 5) Verver, a sergeant at PSC who  
13 has personally responded to grievances about conditions in the B-Max; and 6) Shelton, PSC’s  
14 classification officer that dealt most directly with Plaintiffs. Christianson, Duncan, Clifton, and Lloyd  
15 are alleged to be supervisors.

16 First, the Court finds that Plaintiffs’ conditions of confinement claim may proceed against  
17 Christianson, Duncan, Clifton, and Verver. Because the SAC alleges that Christianson, Clifton, and  
18 Duncan are responsible for conditions in the B-Max, and have been made “personally aware” of

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19  
20 <sup>13</sup> Defendants argue that the SAC does not properly allege liability with respect to the individual Defendants, noting that the  
21 SAC specifies that each individual Defendant listed above is sued in his official capacity, rather than his personal capacity.  
22 ECF No. 23-1 at 13-14. Specifically, Defendants contend that “by moving against all Defendants in their official capacities  
23 only, Plaintiffs have only stated a claim against the municipality that employs them, Stanislaus County, and has [sic] not  
24 stated a claim against these government officials personally.” *Id.* at 14. Plaintiffs responded to this contention as follows in  
25 their opposition: “[t]o the extent that the SAC limits the allegations against each of these defendants to only their official  
capacity, Plaintiffs request that those limits be stricken from the complaint and replaced with allegations that the individual  
defendants are sued in their individual and official capacities.” ECF No. 25 at 9. Given that Plaintiffs’ counsel were aware  
that this was their last opportunity to amend, the Court admonishes them for their carelessness in drafting the SAC.  
Nevertheless, the Court will evaluate the merits of the SAC’s allegations and whether each individual may be held liable in  
his personal capacity pursuant to § 1983. *See, e.g., Willis v. Blevins*, 966 F. Supp. 2d 646, 658 (E.D. Va. 2013) (upon  
counsel’s apology for the “scrivener’s error” and request to construe it as a § 1983 claim, consider a claim labeled in the  
complaint as a § 1985 claim as a § 1983 claim).



1 conditions and deprivations in the B-Max through meetings with the Stanislaus County Criminal  
2 Defense Bar, it has sufficiently alleged § 1983 supervisory liability as to Plaintiffs' conditions of  
3 confinement claim. Admittedly, the supervisory linkage here is weak, but it is nevertheless sufficiently  
4 alleged to survive 12(b)(6) dismissal. The allegations relating to Verver are stronger, as the SAC alleges  
5 that Verver "personally responded to repeated requests, complaints, and grievances about the  
6 unconstitutional conditions at B-Max by claiming, *inter alia*, that 'gang members are not attempting to  
7 rehabilitate themselves," and that Verver has been made "personally aware" of the conditions in the B-  
8 Max through grievances made by Plaintiffs and other detainees. SAC ¶ 27.

9         Second, the Court finds that Plaintiffs' due process and equal protection claims may proceed  
10 against Christianson, Duncan, Clifton, and Shelton. The reasoning regarding their supervisory liability  
11 for the conditions of confinement claim applies here as well. Regarding Shelton, because the SAC  
12 alleges that Shelton is the classification officer who "deals most directly with Plaintiffs and others  
13 similarly situated," and is the officer who is "in charge of classification assignments, housing  
14 assignments, and debriefs," the SAC sufficiently alleges personal liability against him.

15         Third, the Court finds that Plaintiffs' excessive force claims may proceed against Christianson,  
16 Duncan, Clifton, and Lloyd. The reasoning regarding supervisory liability for Christianson, Duncan, and  
17 Clifton also apply to the excessive force claim. As for Lloyd, given he was alleged to have "trained  
18 officers and condoned and participated in a culture of excessive force that is used against pretrial  
19 detainees in locked cells during simple cell searches," the SAC adequately alleges personal liability  
20 against him.

#### 21         **B.         Entity Defendants and Official-Capacity Liability<sup>14</sup> for Individual Defendants**

22         The SAC lists two public entities as Defendants: PSC and the Sheriff's Office.

23         To state a claim against a public entity under *Monell*, a plaintiff must plead "(1) that the plaintiff

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24 <sup>14</sup> As discussed above, because an official-capacity claim against an individual defendant is essentially a proxy for bringing suit  
25 against a municipal entity, the analysis for municipal liability pursuant to *Monell* also applies when evaluating whether the  
individual defendants may be sued in their official capacity. *Kentucky*, 473 U.S. at 166.

1 possessed a constitutional right of which she was deprived; (2) that the municipality had a policy; (3)  
2 that this policy amounts to deliberate indifference to the plaintiff's constitutional right; and, (4) that the  
3 policy is the moving force behind the constitutional violation." *Dougherty v. City of Covina*, 654 F.3d  
4 892, 900 (2011) (internal quotation marks and citations omitted). The policy must be the result of a  
5 decision of a person employed by the entity who has final decision or policy making authority. *Monell*,  
6 436 U.S. at 694. For purposes of a Rule 12(b)(6) motion, allegations of *Monell* liability will be sufficient  
7 if they "(1) identify the challenged policy/custom; (2) explain how the policy/custom is deficient; (3)  
8 explain how the policy/custom caused the plaintiff harm; and (4) reflect how the policy/custom  
9 amounted to deliberate indifference, *i.e.* show how the deficiency involved was obvious and the  
10 constitutional injury was likely to occur." *Lucas v. City of Visalia*, No. 1:09-CV-1015 AWI DLB, 2010  
11 WL 1444667, at \*4 (E.D. Cal. Apr. 12, 2010). Furthermore, because the SAC asserts a "policymaker"  
12 claim based on Christianson's leadership role in the Sheriff's Office and PSC to commit the acts that  
13 allegedly caused Plaintiffs' constitutional injuries, the issue before the Court is whether the SAC  
14 sufficiently alleges that Christianson was "responsible for establishing final policy with respect to the  
15 subject matter in question" and made "a deliberate choice to follow a course of action from among  
16 various alternatives." See *Armour v. Country Club Hills*, No. 11 C 5029, 2014 WL 63850, at \*7 (N.D.  
17 Ill. Jan. 8, 2014) (quoting *Pembaur v. City of Cincinnati*, 475 U.S. 469, 483 (1986)).

18 Defendants again argue that Plaintiffs have failed to state a claim for municipal liability pursuant  
19 to *Monell*. ECF No. 23-1 at 15-16. Specifically, they note that there is only one allegation that purports  
20 to support *Monell* liability: "Plaintiffs allege that placement and classification are conducted under a  
21 written formal and unwritten informal policy that is inherently racially biased." *Id.* at 16 (quoting SAC ¶  
22 3). Defendants argue that this allegation fails to meet the requirements for *Monell* liability, as noted  
23 above. *Id.*

24 In their Opposition, Plaintiffs argue that because Christianson is the elected Sheriff of Stanislaus  
25 County, he is a policymaker within the definition set forth in *Monell*, and therefore, his personal actions

1 and inactions ascribe liability onto the Sheriff’s Office. ECF No. 25 at 14. “His actions and inaction are  
2 the actions and inactions of the entity. His actions and inactions create the policy of the entity.” *Id.*

3 Generously construing the SAC’s allegations, as it must, the Court finds that the SAC has  
4 satisfied the requirements listed above to plead *Monell* liability. The policy identified is that Defendants  
5 house and classify detainees in a manner that is racially biased against Hispanic inmates. The policy is  
6 deficient because it intentionally discriminates against detainees who are suspected of belonging to  
7 Hispanic gangs, but not against detainees suspected of belonging to non-Hispanic gangs. As alleged, the  
8 policy has caused harm to the Plaintiffs because it reflects a constitutionally impermissible racial bias  
9 against Hispanic inmates; has caused them to be deprived of access to outdoor exercise, sensory  
10 stimulation; has caused them to experience excessive force; and is in violation of their due process rights  
11 to periodic classification reviews. Furthermore, because the SAC alleges that through meetings with the  
12 Stanislaus County Criminal Defense Bar, Defendants—particularly Christianson, the elected Sheriff  
13 who oversees the Sheriff’s Office—have been made “personally aware” of conditions and deprivations  
14 in the B-Max, the SAC adequately alleges deliberate indifference on the part of the Sheriff’s Office and  
15 PSC. The Court finds that the SAC sufficiently, though tenuously, alleges that Christianson is a  
16 policymaker who exercised “at least *de facto* authority with respect to the conduct at issue.” *See Armour*,  
17 2014 WL 63850 at \*7. Accordingly, the Court DENIES Defendants’ motion to dismiss Plaintiffs’  
18 *Monell* claims and finds that the individual Defendants may also be sued in their official capacities.

### 19 CONCLUSION AND ORDERS

20 For the reasons stated above, Defendants’ motion to dismiss is **GRANTED IN PART** and  
21 **DENIED IN PART**, as follows:

- 22 1. As to Plaintiffs’ Fourteenth Amendment Conditions of Confinement claim against  
23 Defendants Clifton, Duncan, Christianson, and Verver, the Motion is **DENIED** insofar as it  
24 alleges that Plaintiffs were not afforded adequate sensory stimulation and opportunities for  
25 outdoor exercise, and the Motion is **GRANTED WITHOUT LEAVE TO AMEND** in all

1 other respects;

2 2. As to Plaintiffs' Fourteenth Amendment Due Process claim against Defendants Clifton,  
3 Duncan, Christianson, and Shelton, the Motion is **DENIED** insofar as it alleges that Plaintiff  
4 were not afforded a timely classification hearing upon placement in the B-Max and were not  
5 afforded periodic classification hearings after being housed in the B-Max, but is **GRANTED**  
6 **WITHOUT LEAVE TO AMEND** in all other respects;

7 3. As to Plaintiffs' Fourteenth Amendment Equal Protection claim against Defendants Clifton,  
8 Duncan, Christianson, and Shelton, the Motion is **DENIED**;

9 4. As to Plaintiffs' Fourteenth Amendment Excessive Force claim against Defendants Clifton,  
10 Duncan, Christianson, and Lloyd, the Motion is **DENIED** insofar as it relates to the  
11 December 2015 incident, but is **GRANTED WITHOUT LEAVE TO AMEND** in all other  
12 respects;

13 5. As to Plaintiffs' *Monell* allegations, the Motion is **DENIED**.

14  
15 Furthermore, Defendants must **ANSWER** the SAC within twenty-one (21) days of the date of  
16 this Order.

17  
18 IT IS SO ORDERED.

19 Dated: April 11, 2017

/s/ Lawrence J. O'Neill  
UNITED STATES CHIEF DISTRICT JUDGE