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IN THE UNITED STATES DISTRICT COURT
IN AND FOR THE EASTERN DISTRICT OF CALIFORNIA

ARMANDO OSEGUEDA;)	Case No. 1:16-cv-01218-LJO-DLB
ROBERT PALOMINO, DAVID LOMELI,)	
JAIRO HERNANDEZ)	
)	SECOND AMENDED COMPLAINT
Plaintiffs,)	
)	
v.)	DEMAND FOR JURY TRIAL
)	
STANISLAUS COUNTY PUBLIC SAFETY)	
CENTER, STANISLAUS COUNTY)	
SHERIFF'S OFFICE, ADAM)	
CHRISTIANSON, Stanislaus County)	
Sheriff, BILL DUNCAN, Captain of Adult)	
Detention, LIEUTENANT GREG CLIFTON,)	
Unit 1 and Unit 2 Commander,)	
LIEUTENANT RONALD LLOYD,)	
Commander of Bureau Administrative)	
Services, SERGEANT STEVEN VERVER,)	
and JAMES SHELTON)	
Defendants.)	

II. PARTIES

A. Plaintiffs

7. Plaintiff Armando Osegueda is a 35 year-old pretrial detainee who was taken into the care and custody of the Stanislaus County Sheriff's Department on March 18, 2012.

8. Mr. Osegueda was initially housed in the Active Tanks at the Men's Jail, until October 2012, when he was told to "roll up" and was moved to B-Max.

9. Mr. Osegueda has spent nearly four years housed in B-Max, due to his classification as a member of a criminal street gang, to wit, Norteño, and his pending charges of violations of California Penal Code section 187, murder. Mr. Osegueda has had no significant rule violations since his detention began in March 2012.

10. In or about May 2016, Mr. Osegueda was issued a green and white jumpsuit, denoting administrative segregation (as opposed to the red and white jumpsuit denoting maximum security that he wore while in B-Max)

11. In or about August 2016, Mr. Osegueda was rehoused in an active Norteño tank at the Men's Jail, but could be returned to B-Max without warning or hearing.

12. On January 20, 2017, Mr. Osegueda was transported to, and re-housed in B-Max without warning or hearing.

13. Plaintiff Robert Palomino is a 47 year-old pretrial detainee who was brought into the care and custody of the Stanislaus County Sheriff's Department on February 26, 2013.

14. Mr. Palomino spent more than three years in B-Max, due to his classification as a member of a criminal street gang, to wit, Norteño and pending charges for violations of California Penal Code section 187, murder. He has had no serious rule violations since his detention began in 2013.

15. In or about May 2016, Mr. Palomino was given a green and white jumpsuit, denoting administrative segregation (as opposed to the red and white jumpsuit denoting maximum security that he wore while in B-Max) and was rehoused in an active Norteño

1 tank at the Men's Jail. Mr. Palomino may be returned to B-Max without warning or
2 hearing.

3 16. On January 20, 2017, Mr. Palomino was transferred back to and re-housed B-
4 Max without warning or hearing.

5 17. Plaintiff David Lomeli has been in the care and custody of the Stanislaus
6 County Sheriff since April 22, 2013.

7 18. Mr. Lomeli denies any gang membership.

8 19. Mr. Lomeli has never received a classification review

9 20. Mr. Lomeli is housed in an Active Tank at the Men's Jail.

10 21. Plaintiff Jairo Hernandez was in the care and custody of the Stanislaus
11 County Sheriff's Office from December 15, 2015 through January 24, 2017, when charges
12 were dismissed against him.

13 22. Jairo Hernandez was housed in the Active Tanks at the Men's Jail.

14 **B. Defendants**

15 23. Defendant Adam Christianson is the elected Stanislaus County Sheriff. As
16 such, he has caused, created, authorized, condoned, ratified, approved, or knowingly
17 acquiesced in the illegal, unconstitutional, and inhumane conditions, actions, policies,
18 customs, and practices that prevail in B-Max and the Active Tanks, as described below.
19 He has trained officers and condoned and participated in a culture of excessive force that
20 is used against pretrial detainees in locked cells during simple cell searches. He has been
21 made personally aware of the conditions and deprivations at B-Max through, *inter alia*,
22 meetings with the Stanislaus County Criminal Defense Bar. He has, therefore, directly
23 and proximately caused, and will continue to cause in the future, the violations of the
24 rights set forth below. Defendant Christianson is being sued in his official capacity only.

25 24. Defendant Greg Clifton is the Public Safety Center Facilities Commander. As
26 such, he has caused, created, authorized, condoned, ratified, approved, or knowingly
27 acquiesced in the illegal, unconstitutional, and inhumane conditions, actions, policies,
28 customs, and practices that prevail in B-Max, as described below. He has trained officers

1 and condoned and participated in a culture of excessive force that is used against pretrial
2 detainees in locked cells during simple cell searches. He has been made personally aware
3 of the conditions and deprivations in B-Max by, *inter alia*, grievances and complaints
4 made by Plaintiffs and others similarly situated. His responses have demonstrated a lack
5 of regard for the constitutional rights of pretrial detainees and a deliberate indifference to
6 the deprivations and harms suffered by the Plaintiffs in his care. He has, therefore,
7 directly and proximately caused, and will continue to cause in the future, the injuries and
8 violations of rights set forth below. Defendant Clifton is sued in his official capacity only.

9 25. Defendant Bill Duncan is the Public Safety Center Facilities Captain. As such,
10 he has caused, created, authorized, condoned, ratified, approved, or knowingly
11 acquiesced in the illegal, unconstitutional, and inhumane conditions, actions, policies,
12 customs, and practices that prevail in B-Max, as described below. He has trained officers
13 and condoned and participated in a culture of excessive force that is used against pretrial
14 detainees in locked cells during simple cell searches. He has been made personally aware
15 of the conditions and deprivations in B-Max by, *inter alia*, grievances and complaints
16 made by Plaintiffs and others similarly situated. His responses have demonstrated a lack
17 of regard for the constitutional rights of pretrial detainees and a deliberate indifference to
18 the deprivations and harms suffered by the Plaintiffs in his care. He has, therefore,
19 directly and proximately caused, and will continue to cause in the future, the injuries and
20 violations of rights set forth below. Defendant Duncan is sued in his official capacity
21 only.

22 26. Defendant Ronald Lloyd is the Captain of the Correctional Emergency
23 Response Team (“CERT”) and the Commander of the Facility Training Officer Program.
24 As such, he has caused, created, authorized, condoned, ratified, approved, or knowingly
25 acquiesced in the illegal, unconstitutional, and inhumane conditions, actions, policies,
26 customs, and practices that prevail in B-Max and Active Tanks, as described below. He
27 has trained officers and condoned and participated in a culture of excessive force that is
28 used against pretrial detainees in locked cells during simple cell searches. He has been

1 made personally aware of the conditions and deprivations in B-Max and Active Tanks by,
2 *inter alia*, grievances and complaints made by Plaintiffs and others similarly situated. His
3 responses have demonstrated a lack of regard for the constitutional rights of pretrial
4 detainees and a deliberate indifference to the deprivations and harms suffered by the
5 Plaintiffs in his care. He has, therefore, directly and proximately caused, and will
6 continue to cause in the future, the injuries and violations of rights set forth below.
7 Defendant Lloyd is sued in his official capacity only.

8 27. Defendant Steven Verver, a sergeant at the Public Safety Center, has
9 personally responded to repeated requests, complaints, and grievances about the
10 unconstitutional conditions at B-Max by claiming, *inter alia*, that “Gang members are not
11 attempting to rehabilitate themselves.” Sergeant Verver has, in his official capacity,
12 demonstrated a reckless disregard for the care, safety, and rights of pretrial detainees in
13 his care. Defendant Verver has, through word and action, demonstrated a willingness to
14 keep Plaintiffs in harsh and unduly restrictive conditions unconstitutionally. As such, he
15 has caused, created, authorized, condoned, ratified, approved, or knowingly acquiesced
16 in the illegal, unconstitutional, and inhumane conditions, actions, policies, customs, and
17 practices that prevail in B-Max and Active Tanks, as described below. He has been made
18 personally aware of the conditions and deprivations in B-Max by, *inter alia*, grievances
19 and complaints made by Plaintiffs and others similarly situated. His responses have
20 demonstrated a lack of regard for the constitutional rights of pretrial detainees and a
21 deliberate indifference to the deprivations and harms suffered by the Plaintiffs in his care.
22 He has, therefore, directly and proximately caused, and will continue to cause in the
23 future, the injuries and violations of rights set forth below. Defendant Verver is sued in
24 his official capacity only.

25 28. Defendant James Shelton is the classification officer that deals most directly
26 with Plaintiffs and others similarly situated. In his official capacity, Defendant Shelton is
27 in charge of classification assignments, housing assignments, and debriefs. Defendant
28 Shelton permitted Plaintiffs, Mr. Osegueda and Mr. Palomino, and those similarly

1 situated, to languish in harsh restrictive conditions in B-Max, without classification
2 review in accordance with written policy, and has denied them any opportunity to
3 challenge their classification. Defendant Shelton has, through word and action,
4 demonstrated a willingness to keep Plaintiffs in harsh and unduly restrictive conditions
5 unconstitutionally. He has explained, after persons similarly situated to Plaintiffs have
6 been harmed, that everything they do, "we do for a reason." Defendant Shelton has
7 suggested that if Plaintiffs and others similarly situated were unhappy with their
8 housing, they could always debrief. As such, he has caused, created, authorized,
9 condoned, ratified, approved, or knowingly acquiesced in the illegal, unconstitutional,
10 and inhumane conditions, actions, policies, customs, and practices that prevail in B-Max
11 and Active Tanks, as described below. He has been made personally aware of the
12 conditions and deprivations in B-Max and Active Tanks by, *inter alia*, grievances and
13 complaints made by Plaintiffs and others similarly situated. His responses have
14 demonstrated a lack of regard for the constitutional rights of pretrial detainees and a
15 deliberate indifference to the deprivations and harms suffered by the Plaintiffs in his care.
16 He has, therefore, directly and proximately caused, and will continue to cause in the
17 future, the injuries and violations of rights set forth below. Defendant Shelton is sued in
18 his official capacity only.

19 III. STATEMENT OF FACTS

20 A. Facts relating to Plaintiffs housed in B-Max

21 29. Plaintiffs Armando Osegueda and Robert Palomino each sues on his own
22 behalf and as a representative of those similarly situated who have been housed in the
23 Stanislaus County Public Safety Center ("**PSC**") maximum security unit, also known as
24 Unit B or B-Max ("**B-Max**") without meaningful review of his placement.

25 30. Mr. Osegueda was placed into the care and custody of the Stanislaus County
26 Sheriff's Department on March 12, 2012.

27 31. Plaintiff Armando Osegueda is a 35 year old man, who has been housed in B-
28 Max from October 17, 2012 until August 2016, a period of nearly four years.

1 32. Mr. Osegueda did not receive a classification review for nearly four years
2 while housed in B-Max, in violation of Sheriff's Department written policy that states all
3 detainees will be granted a classification review every 3 months.

4 33. Mr. Osegueda was granted downgrade packet on or about May 2016, but was
5 never afforded the opportunity to challenge his classification or present his views
6 regarding his classification.

7 34. Mr. Osegueda was granted a green and white jumpsuit, denoting
8 administrative segregation rather than the red and white jumpsuit (which denotes
9 maximum security) that he has been wearing since his incarceration on June 26, 2016 but
10 was denied movement to a less restrictive housing unit until August 2016.

11 35. Mr. Osegueda was moved to an "Active Norteño tank" at the Men's Jail on or
12 about August 2016, but may be returned to B-Max without warning or hearing.

13 36. Mr. Osegueda was returned to B-Max, without warning or hearing on
14 January 20, 2017.

15 37. As of January 30, 2017, Mr. Osegueda has not been afforded a hearing or
16 classification review regarding his return to B-Max.

17 38. Plaintiff Robert Palomino was placed into the care and custody of the
18 Stanislaus County Sheriff's Department on February 26, 2013.

19 39. Mr. Palomino is a 47 year old man, who was housed in B-Max from February
20 26, 2013 to in or about May 2016, a period of more than three years.

21 40. Mr. Palomino did not receive a classification review, where he could
22 challenge his classification or present his views, while housed in B-Max, in violation of
23 Sheriff's Department written policy that states all detainees will be granted a
24 classification review every 3 months.

25 41. Mr. Palomino repeatedly requested to be downgraded from B-Max.

26 42. In or about May 2016, Mr. Palomino was pulled from his cell and escorted
27 into a room with Defendants Shelton and Verver, and Sergeant Martinez. Defendant
28 Verver presented Mr. Palomino with his grievance that had been submitted to Lieutenant

1 Lloyd, asked him to review it, and it included a response from Defendant Lloyd, that
2 informed him that although he agreed with Sergeant Verver's response, he elected to
3 remove Mr. Palomino from B-Max.

4 43. In or about May 2016, Mr. Palomino was granted a green and white jumpsuit,
5 denoting administrative segregation rather than the red and white jumpsuit (which
6 denotes maximum security) that he has been wearing since his incarceration on February
7 26, 2013.

8 44. Mr. Palomino was moved to an "Active Norteño tank" at the Men's Jail in or
9 about May 2016, but may be returned to B-Max without warning or hearing.

10 45. Mr. Palomino was returned to B-Max, without warning or hearing on January
11 20, 2017.

12 46. As of January 30, 2017, Mr. Palomino has not received a classification review
13 or hearing.

14 47. Plaintiffs Armando Osegueda and Robert Palomino, and those similarly
15 situated, are pretrial detainees. Mr. Osegueda, Mr. Palomino, and others similarly
16 situated are housed at PSC simply because they cannot post bail or are awaiting trial
17 without bail.

18 48. Mr. Osegueda, Mr. Palomino, and those similarly situated are pretrial
19 detainees. As such, they are presumed innocent, yet they suffer harsher conditions and
20 greater deprivations than those imposed on prisoners incarcerated through the California
21 Department of Corrections.

22 49. There are currently 15 pretrial detainees housed in B-Max who are classified
23 as active Norteño or Northern Hispanic gang members. Those detainees have been
24 housed in segregation for periods ranging between five months to seven years. Half of
25 those pretrial detainees have been housed in segregation without meaningful review for
26 more than three years.

27 50. There are currently pretrial detainees who have been housed in B-Max for
28 more than ten years while awaiting trial.

1 51. Administrative segregation is over-used in the Stanislaus County jail system.

2 52. The majority of pretrial detainees who are housed in administrative
3 segregation are housed there for non-disciplinary reasons.

4 53. Pretrial detainees such as Mr. Osegueda, Mr. Palomino, and others similarly
5 situated, who are awaiting trial, suffer years of confinement in B-Max for indeterminate
6 lengths.

7 54. Assignment to the B-Max unit is often made based on the charges that the
8 pretrial detainee is facing and allegations that have been charged, but not proven, that the
9 person is a Norteño or Northern Hispanic gang member.

10 55. Stanislaus County Sheriff's Department policy defines the category of
11 detainees subject to "Administrative Segregation" as "Inmates who are determined to be
12 prone to escape, assault staff, assault other inmates, violate facility rules or criminal laws,
13 and/or disrupt the operations of the facility. Administrative segregation shall consist of
14 separate and secure housing, but shall not involve any other deprivations of privileges
15 other than is necessary to obtain the objective of protecting other inmates and staff or as a
16 consequence of the inmate's behavior."

17 56. The Stanislaus County Sheriff's Department keeps its classification records
18 secret to the defendant and defendant's counsel, but makes those records available to the
19 prosecution. Such action makes it impossible for any detainee to intelligently answer or
20 oppose his classification, if and when he is granted a classification review.

21 57. The Stanislaus County Sheriff's Department Policy maintains a list of
22 "Hazard Codes." In those codes, codes are assigned to Norteño, Sureño, and Northern
23 Rider groups, each of which is typically associated with persons of Hispanic descent, but
24 assigns no codes to groups typically associated with other races, such as the Aryan
25 Brotherhood, Skinheads, Jugaloos, Crips, Bloods, etc.

26 58. Pretrial detainees who are assigned to B-Max are often kept in B-Max for
27 disciplinary reasons are often held there for indeterminate lengths after their disciplinary
28 periods are served.

1 59. Stanislaus County's harsh regime of segregation in B-Max is inhumane and
2 debilitating. Plaintiffs, and others similarly situated, are isolated in a cramped concrete
3 cell for 38 to 80 continuous hours at a time with one cellmate. The cells are
4 approximately 6.5 x 12.' Plaintiffs are afforded a bunk bed, a combination toilet-sink unit,
5 a desk, a stool, and a fluorescent light in the ceiling.

6 60. Plaintiffs, and others similarly situated, are permitted only very limited
7 access to telephone calls to counsel or family (phones are available during yard periods
8 only,) contact visits with counsel.

9 61. Plaintiffs, and others similarly situated, are denied adequate recreational time
10 or "yard privileges," rehabilitative, vocational, recreational, or educational programming.

11 62. Plaintiffs, and others similarly situated, receive, at most, three hours
12 yard/recreation time per week. Scheduled yard times for the bottom tier, or first floor,
13 are Mondays, Thursdays, and Saturdays, for one hour apiece. The top tier, or second
14 floor, is afforded yard on Tuesdays, Fridays, and Sundays. Wednesdays are designated
15 "down days" for cleaning of the unit. Morning and evening yard are alternated.

16 63. The "recreational yard" that Plaintiffs, and others similarly situated, housed
17 in B-Max are afforded is an enclosed concrete cell. There is a window approximately
18 twenty feet up in the cell that is covered with a screen or wired mesh that does not allow
19 for unobstructed sunlight and fresh air. The "yard," as constituted, does not afford
20 pretrial detainees with an outdoor environment.

21 64. Plaintiffs, and others similarly situated, are permitted only three showers per
22 week and three hours' "yard time" per week, which is access to an empty concrete cell
23 with only a television and telephone. There is no access to the outside, no exercise
24 equipment, no recreational equipment, and no seating.

25 65. Plaintiffs, and others similarly situated, and housed in B-Max are only
26 exposed to the outside during their walks to and from transportation taking them to the
27 courthouse.

28 66. The amount of time Plaintiffs, and others similarly situated, are confined to

1 their cells depends on the yard schedule. A detainee can be confined to his cell for
2 periods of 38 hours, 56 hours, twice a month a detainee is confined to his cell for 60 hours,
3 and twice a month he is confined for 80 hours at a time.

4 67. Plaintiffs, and others similarly situated, may only access telephones to call
5 their attorneys, investigators, friends, or family during yard times. The yard schedule
6 and telephone restrictions limit pretrial detainees in B-Max to only four telephone calls
7 during normal business hours per month, thereby interfering with their ability to
8 participate in their own defense and denying them the effective assistance of counsel.

9 68. Plaintiffs, and others similarly situated, are unable to challenge or request
10 meaningful review of the restrictive conditions that exist in B-Max. Defendant Clifton
11 has informed pretrial detainees that housing is not a grievable matter.

12 69. Plaintiffs, and others similarly situated are unable to challenge or request
13 meaningful review of the restrictive conditions that exist in B-Max. Defendant Sergeant
14 Verver has informed each pretrial detainee that “current policy and procedure are being
15 administered correctly in regards to the classification and housing of inmates in
16 Stanislaus County. You were and are housed with respect to your charges.”

17 70. Plaintiffs, and others similarly situated, are unable to request meaningful
18 review of the lengthy and inhumane amount of time in which they are confined to their
19 cells, a condition imposed as a result of being housed in B-Max, as Defendant Clifton’s
20 response is to inform the person “this is not a restrictive program.”

21 71. Plaintiffs, and others similarly situated, are restrained with the use of waist
22 chains, shackles, and lock boxes that secure their hands tightly to their waist during
23 attorney visits, personal visits, and court.

24 72. The lockboxes force the metal into the flesh of the men’s wrists and arms,
25 creating more markings, scabbing, scars, and numbness. Plaintiffs, and others similarly
26 situated, experience pain and cramping as well as periods of numbness after the
27 lockboxes are removed.

28 73. During personal visits, which require Plaintiffs, and others similarly situated,

1 to use a telephone to speak to their visitor, the lockboxes have their hands secured at their
2 waist, or just above, making use of the telephones painful and impracticable.

3 74. Plaintiffs, and others similarly situated, who are classified as active Norteño
4 or Northern Hispanic are denied access to rehabilitative programs, such as Alcoholics or
5 Narcotics Anonymous, anger management classes, or parenting classes. They are denied
6 access to educational programs such as G.E.D. programs, and are denied access to
7 vocational programs. If they are convicted, they are denied access to the Alternative
8 Work Program, ankle monitoring, or any other form of alternative sentencing. These
9 programs are available to all other detainees and inmates.

10 75. Defendants, by and through their policies and practices, personally and
11 through their agents, have suggested that if Plaintiffs and others similarly situated were
12 unhappy with their housing, they could always debrief.

13 76. Defendants persistently, and with deliberate indifference, deny these men not
14 only the normal conditions necessary for a person's mental and physical well-being, but
15 also any meaningful way to address the conditions of their confinement. These
16 tormenting and prolonged conditions of confinement have produced harmful and
17 predictable psychological and physical deterioration among Plaintiffs and class members.

18 77. Plaintiffs, and those similarly situated, are denied the ability to make citizen's
19 complaints regarding officer misconduct or the disproportionately harsh treatment they
20 are afforded, rather they are informed that they are "not a citizen, you are an inmate."

21 **B. Facts Relating to the "Active Tanks" at the Stanislaus County Men's Jail**

22 78. Plaintiffs Armando Osegueda, Robert Palomino, David Lomeli, and Jairo
23 Hernandez each sue on his own behalf and as a representative of those similarly situated
24 who have been housed in the Stanislaus County Men's Jail ("**Men's Jail**") in "active
25 Norteño tanks ("**Active Tanks**") or classified as active Norteño or Active Northern
26 Hispanics without meaningful review of his placement.

27 79. Upon booking, detainees are asked whether they are "active" or "a drop-
28 out." Alternatively, they are asked if they can be housed with anybody or whether they

1 need protection. They are not given an option to say they are neither.

2 80. Upon booking, those pretrial detainees who are classified as active Norteño
3 are issued a green and white jumpsuit, which, according to Stanislaus County Sheriff's
4 Department policy, denotes "Administrative Segregation and Norteño." They are then
5 put into "Active Tanks."

6 81. Stanislaus County Sheriff's Department policy defines the category of
7 detainees subject to "Administrative Segregation" as "Inmates who are determined to be
8 prone to escape, assault staff, assault other inmates, violate facility rules or criminal laws,
9 and/or disrupt the operations of the facility. Administrative segregation shall consist of
10 separate and secure housing, but shall not involve any other deprivations of privileges
11 other than is necessary to obtain the objective of protecting other inmates and staff or as a
12 consequence of the inmate's behavior."

13 82. The Stanislaus County Sheriff's Department Policy maintains a list of
14 "Hazard Codes." In those codes, codes are assigned to Norteño, Sureño, and Northern
15 Rider groups, each of which is typically associated with persons of Hispanic descent, but
16 assigns no codes to groups typically associated with other races, such as the Aryan
17 Brotherhood, Skinheads, Jugaloos, Crips, Bloods, Piru, etc.

18 83. The Stanislaus County Sheriff's Department keeps its classification records
19 secret to the defendant and defendant's counsel, but makes those records available to the
20 prosecution. Such action makes it impossible for any detainee to intelligently answer or
21 oppose his classification.

22 84. Each "active tank" at the men's jail houses 12 men.

23 85. The active tank measures 25' by 20'. There is a total of 12 beds, comprised of
24 6 bunk beds in each tank. The tank is equipped with two toilets and sinks (1 combination
25 toilet/sink unit and one stand alone toilet and sink.)

26 86. The tanks are divided by a gate that runs through the middle of it, dividing
27 the sleeping area from the day area by floor to ceiling bars.

28 87. Each tank is equipped with two large picnic-style tables and one telephone.

1 88. Some active tanks are unsanitary and in disrepair. Water leaks through the
2 ceiling on the second floor (of a three floor facility). The upper walls contain black mold.

3 89. Upper respiratory infections and other illnesses are common in the Active
4 Tanks.

5 90. The tanks at the Men's Jail house both pretrial detainees and persons who are
6 serving sentences for misdemeanors and/or serving "local prison" time pursuant to AB
7 109. Often, pretrial detainees and convicted inmates are housed in the same tank.

8 91. Plaintiffs, and others similarly situated, housed in the active tanks at the
9 men's jail are offered yard privileges outside constrained in a series of cages, without
10 recreational equipment, for three hours a week. Those three hours are comprised of two
11 one and a half hour increments. There is no regular yard schedule. If a detainee is in
12 court, has a legal visit, or is in a personal visit when yard time is called, they are not
13 afforded yard at an alternate time so they must wait until the next week to be afforded
14 yard privileges.

15 92. Plaintiffs, and others similarly situated, who are housed in active tanks at the
16 Men's Jail are restrained with the use of waist chains, shackles, and lock boxes that secure
17 their hands tightly to their waist during attorney visits, personal visits, and court.

18 93. The lockboxes used at the Men's Jail have been changed to a box that is .25
19 inches larger than the lockboxes used at PSC. The larger size forces the metal into the
20 flesh of the men's wrists and arms, creating more markings, scabbing, scars, and
21 numbness. Pretrial detainees experience pain and cramping as well as periods of
22 numbness after the lockboxes are removed.

23 94. During personal visits, which require Plaintiffs, and others similarly situated,
24 to use a telephone to speak to their visitor, the lockboxes have their hands secured at their
25 waist, or just above, making use of the telephones painful and impracticable.

26 95. Plaintiffs, and others similarly situated, who are classified as active Norteño
27 or Northern Hispanic are denied access to rehabilitative programs, such as Alcoholics or
28 Narcotics Anonymous, anger management classes, or parenting classes. They are denied

1 access to educational programs such as G.E.D. programs, and are denied access to
2 vocational programs. If they are convicted, they are denied access to the Alternative
3 Work Program, ankle monitoring, or any other form of alternative sentencing. These
4 programs are available to all other detainees and inmates.

5 **C. Facts Relating to Excessive Force**

6 96. Plaintiffs and those similarly situated, are subjected to excessive force during
7 “raids” and routine searches of their cells. Plaintiffs, and those similarly situated, have
8 been subjected to the use of pellets, block guns, and tasers.

9 97. Plaintiffs, and others similarly situated, have not been issued any written
10 instruction or policy on expected behavior during raids or cell searches.

11 98. When correctional officers and members of the CERT team determine there is
12 a need to search inside an active tank, they approach the cell and start shooting into the
13 cell with the use of shotguns (pellets or pepper balls) or block guns. Detainees are
14 contemporaneously ordered to get down or they will be shot in the head. The force is
15 used in the absence of any danger to the correctional officers as the doors are closed and
16 locked.

17 99. Correctional officers and members of the CERT team deploy “flash bang”
18 grenades on the tier, just outside the open bars of the cells prior to searches, despite the
19 lack of any present danger to the officers who are standing outside the locked tanks.

20 100. In or about October 2012, Armando Osegueda was housed in the Active
21 Tanks of the Men’s Jail. Officers came to his cell, stood outside the closed bars, and shot
22 pepper balls into the enclosed cell, spraying powder everywhere. There was, at the time,
23 no ongoing incident and no threat toward any officer. While officers were shooting, they
24 were shouting “Get the fuck down or I will shoot you in the fucking head.” If anyone
25 moves or ducks, they will be shot. Once all twelve men were down, officers entered the
26 cell and placed them in handcuffs. All twelve detainees were escorted to a small
27 interview room where everyone was strip searched, their persons were searched, and the
28 cell was thoroughly searched. When the men were returned to the cell there was

1 “powder everywhere.”

2 101. In or about October 2012, a raid took place in B-Max at the same time as the
3 raid in the Men’s jail. All sections were hit simultaneously. Detainees were ordered to
4 the ground in their cells before doors were opened. Detainee Angel Devilar moved and
5 was tased by an officer, through the tray slot, before the door to his cell was opened.
6 Detainees were then pulled out of their cells, were strip searched, and placed on their
7 knees in the B-Max dayroom for hours. Detainee Felix Lopez was complaining of severe
8 leg pain and wanted to get up. Officers threatened to slam him down. Officers informed
9 the detainees that if they moved or even shifted, they would be shot or tased.

10 102. On or about June 2014, Mr. Osegueda and Mr. Palomino returned from court
11 and entered B-Max. Detainees were already placed in the yard, on their knees, with guns
12 pointed at them. Mr. Osegueda and Mr. Palomino were stripped out and then placed in
13 the yard, on their knees, with guns pointed at them, where they and other detainees
14 remained for another 1 to 2 hours.

15 103. On or about November 2014, the CERT team entered B-Max just after dinner.
16 Detainees who were confined in the small, cramped cells, described above, and behind
17 solid doors with only a safety glass window and tray slot were ordered to their knees.
18 They were told to “cuff up” through the tray slot, but also told that if they shifted or
19 raised up they would be shot. While detainees from each cell were searched, one officer
20 pointed a gun at them while the other held his taser toward them. Mr. Palomino and his
21 cellmate, Anthony Gonzales were taken out of the unit to a holding cell. Detainees,
22 including Mr. Osegueda, were moved to the multipurpose room or shower areas to be
23 strip searched. Detainee Andrew Melendez was pushed against the shower wall. He and
24 his cellmate, Carlos Soriano were “roughed up.” Detainees were then moved to the
25 dayroom and placed on their knees, where they remained for another 2-3 hours.

26 104. On or about December 2015, Plaintiffs David Lomeli and Jairo Hernandez
27 were housed in the Active Tanks” of the Men’s Jail. At approximately 6:00 or 7:00 p.m.,
28 Mr. Lomelli was in the dayroom side of the 12 man cell, watching T.V. CERT members

1 began shooting pepper balls or some sort of rounds as soon as the door to the tier opened,
2 before they arrived at any particular cell. CERT members approached Mr. Lomeli and
3 Mr. Hernandez's cell. A flash-bang grenade was deployed. Mr. Hernandez, who was
4 standing near the bars, was hit with shrapnel. CERT members yelled "Get the fuck down
5 or we will shoot you in the head," while continuing to shoot rounds into the cell while
6 the bars were closed and locked. Mr. Lomeli remembers backing up to get out of the way
7 of the rounds that were already coming into the cell. Mr. Lomeli was struck by rounds in
8 the neck, just below the left ear, and leg when he tried to duck behind the table. No
9 ongoing incident was occurring and there was no known threat to officers. It was merely
10 a routine search for extra clothing and contraband. No contraband was located to Mr.
11 Hernandez's or Mr. Lomeli's knowledge.

12 105. In or about July 2013, pretrial detainees, including Mr. Osegueda and Mr.
13 Palomino, were removed from their cells for a routine search and placed in the concrete
14 "yard" in no clothing other than their boxers and forced to remain on their knees with
15 block guns pointed at them for hours, without being permitted to move, shift, access
16 restrooms, or water while routine searches were made of all cells in B-Max.

17 106. On or about January 29, 2017, at approximately 6:00 a.m., David Lomeli was
18 sleeping in his cell in the Active Tanks. It was still dark outside. Members of the CERT
19 team approached the cell and started shooting into the enclosed cell from outside the
20 bars. Those present inside the cells were ordered to the ground and placed in mechanical
21 restraints. A routine search was conducted in the cell. No incident was occurring,
22 everyone was asleep inside the cell. To Mr. Lomeli's knowledge, no weapons or
23 contraband was found.

24 IV. CAUSES OF ACTION

25 First Cause of Action: Fourteenth Amendment

26 (Unconstitutional conditions of confinement)

27 107. Plaintiffs incorporate by reference allegations contained in paragraphs 29-77,
28 as if set forth fully herein.

1 108. Plaintiffs advance this claim on their own behalf, and on behalf of the
2 Fourteenth Amendment subclass, against all defendants.

3 109. By their policies and practices described herein, defendants have deprived
4 and continue to deprive plaintiffs, and those similarly situated, of the minimal civilized
5 measure of life's necessities, and have violated their basic human dignity and their right
6 to be free from cruel and unusual punishment under the Fifth and Fourteenth
7 Amendments to the United States Constitution for each of the reasons set forth below.

8 110. Inasmuch as the conditions in B-Max are not reasonably related to any
9 ascertainable penological interest, the denial of access to telephones, which are readily
10 available to all other groups and even in the Active Tanks of the Men's Jail, to call
11 attorneys or families violates Plaintiffs' rights to equal protection of the laws.

12 111. Defendants' policies evidence purposeful discrimination as only Latino gangs
13 are listed amongst the hazard codes, which are used for the purposes of determining who
14 is to be segregated, while all other alleged gangs typically associated with other
15 ethnicities are notably absent. These other groups do have a presence in Stanislaus
16 County.

17 **A. Deprivation of Basic Human Need**

18 112. First, the cumulative effect of extremely prolonged confinement, along with
19 denial of the opportunity to downgraded, the denial of the opportunity to be housed with
20 other pretrial detainees, the deprivation of educational, rehabilitative, or vocational
21 programs, and other crushing conditions of confinement in the Stanislaus County B-Max
22 Unit, constitute a serious deprivation of at least one basic human need, including but not
23 limited to environmental and sensory stimulation, mental and physical health, physical
24 exercise, sleep, and meaningful activity.

25 **B. Imposition of Serious Psychological and Physical Injury, Pain, and Suffering**

26 113. Second, extremely prolonged exposure to these deprivations of basic human
27 needs is currently imposing serious psychological pain and suffering and permanent
28 psychological and physical injury on Plaintiffs and the class they represent.

1 114. In addition to Plaintiffs' current psychological and physical pain, the
2 likelihood that Plaintiffs and the class will remain in B-Max or be arbitrarily re-housed
3 there for the foreseeable future subjects plaintiffs and the class they represent to a
4 significant risk of future debilitating and permanent mental illness and physical harm.

5 **C. B-Max Confinement Designed to Coerce Plaintiffs to Provide Information or**
6 **Accept Pleas**

7 115. Third, Defendants' harsh policies are not legitimately related to security or
8 other penological needs of isolating alleged dangerous prisoners from others, but rather
9 are designed to coerce Plaintiffs to debrief and become informants for the State, and/or to
10 accept plea offers made by the District Attorney. This policy is evidenced by Deputy
11 Shelton's comments that if Plaintiffs and those similarly situated are unhappy with their
12 housing, they should debrief.

13 116. This policy of holding Plaintiffs and class members in prolonged harsh
14 conditions without any meaningful information on how they may downgrade without
15 debriefing or simply accepting a plea so they may be transferred to a state prison is, as
16 one court puts it, "tantamount to indefinite administrative segregation for silence – an
17 intolerable practice in modern society." It is cruel and unusual punishment for
18 defendants to coerce detainees to provide information on other detainees – if indeed they
19 have any such information – by maintaining them in stifling and punitive conditions that
20 constitute an atypical and significant hardship, comparable to the conditions of
21 "Supermax" prisons, unless they so inform.

22 117. Detainees who debrief incur substantial risk of serious harm and retaliation to
23 themselves and their families. The combination of the crushing conditions in B-Max, the
24 policies designed to coerce detainees to debrief or plea, the lack of any effective means of
25 obtaining release from B-Max without debriefing or pleading, and the substantial risk of
26 harm if one does debrief, puts prisoners in an untenable position and constitutes an
27 unconstitutional threat to the safety of detainees confined in B-Max in violation of the
28 Fourteenth Amendment to the United States Constitution.

1 118. Plaintiffs are informed and believe that pretrial detainees who accept plea
2 bargains offered by the District Attorney's Office, even though they are now convicted,
3 are downgraded from maximum security and placed in less restrictive housing while
4 they await transport from the county to California Department of Corrections.

5 **D. Disproportionate Punishment**

6 119. Fourth, Defendants' policy of indefinite and prolonged placement in B-Max
7 imposes disproportionate punishment on plaintiffs and class members. Plaintiffs and
8 class members have not been convicted of the offenses they are charged with. The
9 majority of persons housed in the B-Max Unit are not there for conduct, but rather are
10 housed there simply because they are classified as Northern Hispanics, active gang
11 members, or some other unknown reason. Placement is entirely capricious and arbitrary.
12 Furthermore, as hazard codes are part of the Stanislaus County Sheriff's Office written
13 policy, and those codes only include gangs typically associated with persons of Hispanic
14 descent, placement is disproportionately burdening Hispanic detainees.

15 120. Defendants have no legitimate penological interest in retaining detainees
16 indefinitely in debilitating conditions such as those found in B-Max, simply because they
17 are gang members or associates, without recent, serious disciplinary or gang-related
18 infractions. Nor is this policy rationally related to legitimate security needs. Defendants'
19 history of inflicting significant psychological and physical harm and the risk of future
20 debilitating harm on these pre-trial detainees simply for allegedly being gang members
21 or associates offends civilized society's sense of decency, constitutes an intolerable
22 practice in modern society, and is a disproportionate punishment which violates the fifth
23 and Fourteenth Amendments.

24 **E. Deprivation of Human Dignity in Violation of Contemporary Standards of**
25 **Human Decency**

26 121. Finally, Defendants' continuation of Plaintiffs' confinement for years under
27 the debilitating and extreme conditions existing at the Safety Center B-Max Unit strips
28 human beings of their basic dignity and humanity in violation of contemporary

1 standards of human decency and constitutes cruel and unusual treatment prohibited by
2 the Fourteenth Amendment to the United States Constitution.

3 122. That Stanislaus County's policies and practices violate contemporary
4 standards of human dignity and decency is evidenced by the fact that those practices are
5 unusual in comparison to the practices and policies of other counties within the State of
6 California with respect to segregated detainee housing. Virtually no other county or state
7 uses mere *alleged* gang association or membership to confine prisoners in SHU facilities.
8 Other states do not house/warehouse hundreds of detainees and prisoners in the SHU
9 for years at a time.

10 **F. Defendants' Deliberate Indifference to the Deprivations Suffered by Plaintiffs**

11 123. The policies and practices complained of herein have been and continue to be
12 implemented by defendants and their agents, officials, employees, and all persons acting
13 in concert with them under color of state law, in their official capacity.

14 124. Defendants have been and are aware of all the deprivations complained of
15 herein, and have condoned or been deliberately indifferent to such conduct

16 125. It should be obvious to defendants and to any reasonable person that the
17 conditions imposed on plaintiffs and class members for many years to come cause
18 tremendous mental anguish, suffering, and pain to such detainees. Moreover, defendants
19 have repeatedly been made aware, through administrative grievances, written
20 complaints, and verbal complaints that class members are currently experiencing
21 significant and lasting injury. Defendants have been deliberately indifferent to the
22 plaintiffs' pain and suffering.

23 126. Indeed, defendants have deliberately and knowingly caused such pain in an
24 effort to force plaintiffs and the class to either debrief or plead to criminal charges.

25 127. Defendants have arbitrarily and capriciously deprived Plaintiff and class
26 members of due process of law in assigning who will be housed in PSC B-Max Unit or
27 Active Norteño tanks without a chance to be heard or notice of what criteria will subject a
28 person to housing in the B-Max Unit or active tanks, subject to the various deprivations

1 therein.

2 **Second Cause of Action : Fourteenth Amendment**

3 **(Due Process)**

4 128. Plaintiff incorporates by reference each and every allegation contained
5 paragraphs 29-77 (B-Max) and 78-95 (Active Tanks) as if set forth fully herein.

6 129. Plaintiff advances this claim on his behalf, and on behalf of the class, against
7 all defendants.

8 130. Defendants have deprived Plaintiff and class members of a liberty interest
9 without due process of law by denying them meaningful and timely periodic review of
10 their continued and long-term detention at PSC B-Max Unit and meaningful notice of
11 what they must do to earn release, in violation of the Fourteenth Amendment to the
12 United States Constitution.

13 131. Defendants have arbitrarily and capriciously deprived Plaintiff and class
14 members of due process of law in assigning who will be housed in PSC B-Max Unit or
15 Active Norteño tanks without a chance to be heard or notice of what criteria will subject a
16 person to housing in the B-Max Unit or active tanks, subject to the various deprivations
17 therein.

18 132. The condition and duration of defendants' confinement of Plaintiff and those
19 similarly situated at the PSC B-Max Unit constitute an atypical and significant hardship
20 as compared with the ordinary incidents of prison life for three basic reasons: (a) the
21 exceedingly harsh and isolated conditions in the B-Max unit; (b) the lengthy duration of
22 confinement in the B-Max Unit; and (c) the arbitrary and capricious assignment to the B-
23 Max Unit.

24 **A. Conditions in the Public Safety Center B-Max Unit**

25 133. The conditions in the B-Max Unit are unduly harsh, and do not generally
26 mirror those conditions imposed upon pre-trial detainees in any other unit of the Public
27 Safety Center or any Stanislaus County jail. These harsh conditions include, but are not
28 limited to: isolation in cells that are sealed off from contact with any other prisoner other

1 than a single cellmate, a prohibition on either personal or legal telephone calls other than
2 during the one hour allotted time in yard, very limited visiting hours for either social or
3 legal visits, no educational or general programming, a yard facility that provide no view
4 of the outside and very little natural sunlight, no recreational equipment, and limited
5 access to showers and personal hygiene.

6 **B. Duration of Confinement in the Public Safety Center’s B-Max Unit**

7 134. Plaintiff and class members have been held in the conditions described above
8 for a period of three years to more than ten years while awaiting trial. Upon information
9 and belief, this shockingly lengthy confinement is atypical in comparison to the ordinary
10 disciplinary and administrative segregation imposed in Stanislaus County.

11 **C. Lack of Meaningful Process**

12 135. Because indefinite placement in the Public Safety Center’s B-Max Unit
13 constitutes a significant and atypical hardship, plaintiffs and class members are entitled
14 to meaningful notice of how they may rejoin general population, as well as meaningful
15 and timely periodic reviews to determine whether they still warrant detention in the B-
16 Max unit.

17 136. Defendants have denied and continue to deny any such notice or meaningful
18 review by: (1) failing to provide pre-trial detainees with notice of what they can do to be
19 released from the B-Max Unit apart from providing information they do not have or
20 risking their life and safety and that of their family by debriefing; (2) providing
21 misleading notice that they can become eligible to be released from the B-max Unit by
22 becoming an “inactive” gang member or associate and refraining from engaging in any
23 gang activities, when in fact pre-trial detainees who are not involved in any current gang
24 activity are still routinely retained in the B-Max Unit; making a predetermination that
25 certain pretrial detainees will stay in the B-Max Unit until they are either released from
26 custody or are transferred to prison, thus rendering periodic reviews substantively and
27 procedurally meaningless; and (4) making the length of time between reviews far too
28 long to comport with the constitutional due-process standard.

1 Stanislaus County Men’s Jail and Stanislaus County Public Safety Center. Plaintiffs are
2 informed and believe that these programs are funded through the inmate welfare fund.

3 142. Plaintiffs and others similarly situated are denied access to vocational
4 training programs These programs are afforded in other units of the Stanislaus County
5 Men’s Jail and Stanislaus County Public Safety Center. Plaintiffs are informed and
6 believe that these programs are funded through the inmate welfare fund.

7 **Seventh Cause of Action**

8 **(Excessive Force)**

9 143. Plaintiffs incorporate by reference allegations contained in paragraphs 96-106,
10 as if set forth fully herein.

11 144. Plaintiffs and those similarly situated, are subjected to excessive force during
12 “raids” and routine searches of their cells. Plaintiffs, and those similarly situated, have
13 been subjected to the use of pellets, block guns, and tasers.

14 145. Plaintiffs, and others similarly situated, have not been issued any written
15 instruction or policy on expected behavior during raids or cell searches.

16 146. When correctional officers and members of the CERT team determine there is
17 a need to search inside an active tank, they approach the cell and start shooting into the
18 cell with the use of shotguns (pellets or pepper balls) or block guns. Detainees are
19 contemporaneously ordered to get down or they will be shot in the head. The force is
20 used in the absence of any danger to the correctional officers as the doors are closed and
21 locked.

22 147. Correctional officers and members of the CERT team deploy “flash bang”
23 grenades in closed, locked active tanks prior to searches, despite the lack of any present
24 danger to the officers who are standing outside the locked tanks.

25 148. Members of the CERT team and other officers taking part in the
26 raids/searches of Plaintiffs’ cells begin deploying flash bang grenades and firing
27 shotguns often before they even reach Plaintiffs’ cells. The cells are closed and locked.
28 Officers and members of the CERT team are separated from Plaintiffs by locked bars. No

1 ongoing emergencies or incidents are going on at the time of the raids. It is objectively
2 unreasonable that officers use flash-bang grenades and shotguns in the face of no present
3 threat. Defendants actions are simply not logically related to any penological or safety
4 interest since no emergency is occurring when these raids are instituted and no threats to
5 safety are present to trigger such an abusive use of force.

6 149. It is objectively unreasonable to force a human being to remain on their knees
7 for hours at a time, while threatening those people with the use of firearms and tasers if
8 they should shift or move.

9 **V. PRAYER FOR RELIEF**

10 150. Plaintiffs and the class they represent have no adequate remedy at law to
11 redress the wrongs suffered as set forth in this Complaint. Plaintiff has suffered and will
12 continue to suffer irreparable injury as a result of the unlawful acts, omissions, policies,
13 and practices of the defendants, as alleged herein, unless Plaintiff and the class members
14 he represents are granted the relief requested. The need for relief is critical because the
15 rights at issue are paramount under the United States Constitution.

16
17 WHEREFORE, Plaintiffs, and those similarly situated, request that this court grant them
18 the following relief:

- 19 a. Actual monetary damages to address the physical and psychological harms
20 they have suffered as a result of the harsh conditions in B-Max and the
21 active tanks;
- 22 b. Punitive Damages as the court or jury may deem appropriate;
- 23 c. Declare that defendants' policies and practices of confining pre-trial
24 detainees in the Stanislaus County B-Max Unit and/or active tanks violates
25 the Fifth, Sixth, Eighth and Fourteenth Amendments to the United States
26 Constitution;
- 27 d. Issue injunctive relief ordering defendants to present a written plan to the
28 Court within 30 days of the issuance of the Court's order providing for:

- 1 i. The release from the B-Max Unit of those pre-trial detainees who
2 have been housed therein without penological interest;
- 3 ii. The release from active tanks of those pre-trial detainees who have
4 been housed therein without penological interest;
- 5 iii. Alleviation of the conditions of confinement of pre-trial detainees so
6 that pre-trial detainees are no longer housed under conditions of
7 isolation, sensory deprivation, lack of social and physical human
8 contact, and environmental deprivation;
- 9 iv. Meaningful review of the continued need for confinement in the B-
10 Max Unit or active tanks within three months of the Court's order;
- 11 v. Meaningful review of classification procedures adopted by the
12 Stanislaus County Sheriff's Office;
- 13 vi. Meaningful review of B-Max and active tank confinement for pre-
14 trial detainees housed in the B-Max Unit or active tanks in the future;
- 15 e. Award Plaintiff the costs of this suit and reasonable attorneys' fees and
16 litigation expenses pursuant to 42 U.S.C. §1988, and other applicable law;
- 17 f. Retain jurisdiction of this case until defendants have fully complied with
18 orders of this court; and
- 19 g. Award such further relief as the Court deems just and proper.

20
21 Respectively submitted by:

22 Dated: February 5, 2017

Lunsford Legal Group, PC

23 /s/ Amber Lunsford

24 The Lunsford Law Firm

25 /s/ Loren Lunsford

26
27 Attorneys for Plaintiffs