

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE SOUTHERN DISTRICT OF OHIO
3 WESTERN DIVISION
4

5 Christopher Knecht,

6 Plaintiff,

7 vs.

8 City of Cincinnati, Ohio, et al.,

9 Defendants.
10
11

) Case No.: 1:12-CV-763

) Honorable S. Arthur Spiegel

) **PLAINTIFF'S SUPPLEMENTAL**
) **OBJECTIONS TO SUPPLEMENTAL**
) **REPORT AND RECOMMENDATION;**
) **PLAINTIFF'S MOTION FOR LEAVE TO**
) **FILE LIMITED AMENDED COMPLAINT**

12
13 Come now the *pro se* plaintiff, pursuant to Rule 72 (b)(2), Federal Rules of Civil
14 Procedure, who objects to the Supplemental Report and Recommendation (Doc. 35) filed on July
15 28, 2014, recommending this action be dismissed in its entirety, and moves the Court to reject
16 such Supplemental Report and Recommendation.
17

18 Plaintiff also moves the Court, pursuant to Rule 15 (a) (2) of the Federal Rules of Civil
19 Procedure, for leave to submit a limited second amended complaint which would only delete the
20 phrase, "well established law" from the first, second, and third causes of action within the first
21 amended complaint, and in place insert the words, "Fourteenth Amendment of the United States
22 Constitution."
23

24 A memorandum in support is attached hereto.
25
26
27

28 Respectfully submitted,

1 Christopher Knecht

2 [REDACTED]
3 Plaintiff in Pro Se

4 **Certificate of Service**

5 A copy of the foregoing was sent electronically to counsel for the defendants at
6 jessica.powell@cincinnati-oh.gov, this 4 day of August, 2014.

7
8
9 Plaintiff
10

11
12 **MEMORANDUM IN SUPPORT**

13
14 Plaintiff objects to the Supplemental Report and Recommendation (Doc. 35) in its entirety as
15 issued by the magistrate assigned to this case, and moves the Court to reject such as specifically
16 argued below.

17
18
19 **A. The magistrate failed to analyze plaintiff's fourth cause of action under the appropriate**
20 **standard by inserting a "property" claim analysis in place of a "liberty" claim analysis.**

21
22 The magistrate analyzed plaintiff's fourth cause of action, noting the elements in establishing a
23 due process claim, then alludes that plaintiff is bringing a "property claim" lodged behind the
24 Due Process Clause, and recommends such claim be dismissed because plaintiff failed to
25 demonstrate that he has a legitimate claim of entitlement to accurate criminal records instead of
26
27
28

1 just an unilateral expectation of such¹ (Doc. 35 at 8)(citation omitted), and that somehow
2 constitutes a property interest claim under the Due Process Clause.

3
4 In *Board of Regents v. Roth*, 408 U.S. 564 (1972), the Supreme Court observed that while it has
5 “eschewed rigid or formalistic limitations on the protection of procedural due process, it has at
6 the same time observed certain boundaries. For the words ‘liberty’ and ‘property’ in the Due
7 Process Clause of the Fourteenth Amendment must be given some meaning.” 408 U.S. at 572:

8
9 “While this Court has not attempted to define with exactness the
10 liberty ... guaranteed [by the Fourteenth Amendment], the term
11 has received much consideration and some of the included things
12 have been definitely stated. Without doubt, it denotes not merely
13 freedom from bodily restraint but also the right of the individual to
14 contract, to engage in any of the common occupations of life, to
15 acquire useful knowledge, to marry, establish a home and bring up
16 children, to worship God according to the dictates of his own
17 conscience, and generally to enjoy those privileges long
18 recognized ... as essential to the orderly pursuit of happiness by
19 free men.” *Meyers v. Nebraska*, 262 U.S. 390, 399. In a
20 Constitution for a free people, there can be no doubt that the
21 meaning of “liberty” must be broad indeed. See, e.g., *Bolling v.*
22 *Sharpe*, 347 U.S. 497, 499-500; *Stanley v. Illinois*, 405 U.S. 645.

23 *Supra.*, 408 U.S. at 572.

26 ¹ The magistrate explains the elements of establishing a due process claim, then bunches together the
27 terms “property” and “liberty” interests when stating that plaintiff “... has failed to cite any law that clearly
28 establishes a constitutional property or liberty right to accurate criminal records” (Doc. 35 at 8), yet the entire focus
of the magistrate’s one paragraph is only tied to “property” interest claims with no analysis of what constitutes a
“liberty” interest claim, which plaintiff raises.

1 In contrast, a property interest is one in which a person has “already acquired in specific
2 benefits,” such as receiving welfare benefits or a driver’s license, in which the Supreme Court
3 has held that the statutory and administrative standards defining eligibility for those benefits is
4 safeguarded by procedural due process under the context of a property interest:

5
6 The Fourteenth Amendment's procedural protection of property is
7 a safeguard of the security of interests that a person has already
8 acquired in specific benefits. These interests—property interests—
9 may take many forms.

10 Thus, the Court has held that a person receiving welfare benefits
11 under statutory and administrative standards defining eligibility for
12 them has an interest in continued receipt of those benefits that is
13 safeguarded by procedural due process. *Goldberg v. Kelly*, 397 U.
14 S. 254. See *Flemming v. Nestor*, 363 U. S. 603, 611. Similarly, in
15 the area of public employment, the Court has held that a public
16 college professor dismissed from an office held under tenure
17 provisions, *Slochower v. Board of Education*, 350 U. S. 551, and
18 college professors and staff members dismissed during the terms of
19 their contracts, *Wieman v. Updegraff*, 344 U. S. 183, have interests
20 in continued employment that are safeguarded by due process.
21 Only last year, the Court held that this principle "proscribing
22 summary dismissal from public employment without hearing or
23 inquiry required by due process" also applied to a teacher recently
24 hired without tenure or a formal contract, but nonetheless with a
25 clearly implied promise of continued employment. *Connell v.*
Higginbotham, 403 U. S. 207, 208.

26
27 Certain attributes of "property" interests protected by procedural
28 due process emerge from these decisions. To have a property

1 interest in a benefit, a person clearly must have more than an
2 abstract need or desire for it. He must have more than a unilateral
3 expectation of it. He must, instead, have a legitimate claim of
4 entitlement to it. It is a purpose of the ancient institution of
5 property to protect those claims upon which people rely in their
6 daily lives, reliance that must not be arbitrarily undermined. It is a
7 purpose of the constitutional right to a hearing to provide an
8 opportunity for a person to vindicate those claims.

9 Property interests, of course, are not created by the Constitution.
10 Rather, they are created and their dimensions are defined by
11 existing rules or understandings that stem from an independent
12 source such as state law—rules or understandings that secure
13 certain benefits and that support claims of entitlement to those
14 benefits. Thus, the welfare recipients in *Goldberg v. Kelly, supra*,
15 had a claim of entitlement to welfare payments that was grounded
16 in the statute defining eligibility for them.

17 *Roth, supra*, 408 U.S. at 576-577 (footnote omitted).
18

19 Plaintiff's due process claim is lodged behind the liberty aspect of the Due Process Clause,
20 which requires plaintiff to demonstrate that he has a constitutionally protected interest; a
21 deprivation of that interest, and the lack of adequate procedural rights prior to the deprivation of
22 that protected interest. (Doc. 35 at 7).
23

24 An interest protected by the Constitution relevant here would be some of those acknowledged by
25 the *Roth* Court, including employment, housing and other "privileges long recognized ... as
26 essential to the orderly pursuit of happiness by free men." *Supra*, 408 U.S. at 572 (quoting,
27 *Meyers v. Nebraska*, 262 U.S. 390, 399 (1923)).
28

1 The deprivation of those constitutionally protected liberty interests were crafted by the
2 defendants when they compiled, prepared, maintained, and disseminated inaccurate criminal
3 history information about the plaintiff, contrary to a duty imposed upon them by way of 28
4 C.F.R. § 20.1 et seq., without affording plaintiff adequate procedural rights prior to depriving
5 him of his protected interests.

6
7 In *Pruett v. Levi*, 622 F.2d 256 (6th Cir. 1980), the claimant brought an action under 28 U.S.C. §
8 1331, alleging that the FBI maintained inaccurate criminal records in his file “which have in the
9 past been detrimental to him and which are presently and will continue to hinder his efforts to
10 seek review of his case or to receive a favorable review by the Pardon and Parole Board.” *Id.*, at
11 257. Upon dismissing the complaint without prejudice, for failure to exhaust administrative
12 remedies, the Sixth Circuit affirmed, *supra*, holding that plaintiff had available administrative
13 remedies at his disposal, and provided some guidance regarding the collection and dissemination
14 of information in criminal files by the FBI as well as the state and local law enforcement
15 agencies:

16 “Federal regulations control the collection and dissemination of
17 information in criminal files by the FBI and by state and local law
18 enforcement agencies. 28 C.F.R. § 20.1 et seq. (1979). State and
19 local enforcement agencies **are required** to formulate plans which
20 will insure the completeness and accuracy of criminal records, 28
21 C.F.R. § 20.21(a); limit their dissemination, 28 C.F.R. § 20.21(b);
22 **provide the individual with access** to his file, **an opportunity to**
23 **appeal** the denial of a request, 28 C.F.R. § 20.21(g); **and require**
24 the state or local agencies **to inform the FBI and other agencies**
25 **of any corrections**, 28 C.F.R. § 20.21(g). State and local agencies
26 **must comply** or face the possible loss of federal funds.”

27 *Id.* at 257 (emphasis added).
28

1 While *Pruett* analyzed the duty the FBI has in maintaining accurate criminal records, and before
2 plaintiff addresses the defendants' duty in a local government agency context, it should be noted
3 that Pruetts' appeal was denied because Pruetts failed to allege or establish that the FBI violated
4 its duty under 28 C.F.R. § 20.1 et seq., when he failed to exhaust available administrative
5 remedies, those being the request from him to the FBI pursuant to 28 C.F.R. § 20.21(g), seeking
6 to have the alleged inaccuracies corrected. *Pruett, supra*, at 257-258. Had Pruetts demonstrated
7 that the FBI contravened its own regulations by refusing to make specific corrections under 28
8 C.F.R. § 20.21(g), and disseminated that erroneous information, he "may state a constitutional
9 claim if the FBI disseminates false information, after a proper request for correction has been
10 made, and the false information is used to deprive the person of liberty, such as parole or
11 probation." *Id.* at 258 (citing *Paine v. Baker*, 595 F.2d 197, 201 (4th Cir.), *cert. denied*, U.S.
12 (1979)).

13 With *Paul v. Davis*, 424 U.S. 693 (1976), the Supreme Court examined a flyer produced by the
14 petitioners, which labeled respondent as a shoplifter and later disseminated to local merchants.
15 Respondent had not been convicted of shoplifting when the flyer was distributed although he had
16 been arrested for such yet later had the case dismissed. *Id.* The *Pruett* Court referenced *Davis*,
17 holding that "[t]he mere existence of an inaccuracy in the FBI criminal files is not sufficient for
18 Pruetts to state a claim of a constitutional injury," *Pruett, supra*, at 258, citing *Davis, supra*, 424
19 U.S. at 712-14, and if one was to examine the reasoning of *Davis* in so holding, they would note
20 that the Court held in part that "the second premise upon which the result reached by the Court of
21 Appeals could be rested – that the infliction by state officials of a "stigma" to one's reputation is
22 somehow different in kind from infliction by a state official of harm to other interests protected
23 by state law – is equally untenable. The words "liberty" and "property" as used in the Fourteenth
24 Amendment do not in terms single out reputation as a candidate for special protection over and
25 above other interests that may be protected by state law. While we have in a number of our prior
26 cases pointed out the frequently drastic effect of the "stigma" which may result from defamation
27 by the government in a variety of contexts, this line of cases does not establish the proposition
28 that reputation alone, *apart from some more tangible interests such as employment*, is either

1 “liberty” or “property” by itself sufficient to invoke the procedural protection of the Due Process
2 Clause.” *Davis*, supra, 424 U.S. at 701 (emphasis added by plaintiff).

3
4 *Pruett* only offered vague allegations; nothing specific in which neither the Court nor the FBI
5 could ascertain, *Id.* at 257. With *Davis*, the respondent also offered mere presumption to injury,
6 to-wit; the possible impact on employment based upon the distribution of a flyer labeling him a
7 shoplifter. *Id.* 424 U.S. at 696-698.²

8 With the facts of the case at bar, plaintiff alleges more than a mere reputation smear; he alleges
9 the denial of employment, social service requests, housing, and the fear of being subjected to a
10 “three strikes” law if found guilty of another felony offense, along with being denied the
11 opportunity to seek a pardon or clemency for his real felony convictions³

12 13 **1. Criminal Justice Information Systems**

14
15 Returning to the defendants duties under 28 C.F.R. § 20, the *Pruett* Court noted that “[t]he
16 regulations at 28 C.F.R. § 20.1 et seq., are consistent with, and define, [the] duty” by the FBI “to
17 take reasonable measures to safeguard the accuracy of the information in its criminal files before
18 disseminating them.” *Id.* at 257 (citation omitted) (material in brackets added by plaintiff).

19 28 C.F.R. § 20.1 states that the regulations established under the Criminal Justice Information
20 Systems statute [28 C.F.R. Chapter 1, Part 20, made relevant by the enactment of §§ 501 and
21 524(b) of the Omnibus Crime Control and Safe Streets Act of 1968, as amended] is for the
22 purpose of assuring “that criminal history record information wherever it appears is collected,

23
24 ² Note the distinction of *Constantieau v. Wisconsin*, 400 U.S. 433 (1971), and *Davis*, supra, finding that
the an individual’s loss of the right to purchase alcohol as a key element in the outcome of the former, while the
latter’s tarnished reputation, standing alone, is not deprivation of a protected liberty interest.

25
26 ³ For instance, “increased vulnerability to police scrutiny – first questioned and last eliminated as a suspect
– *Davidson v. Dill*, 503 P.2d 157, 159 (Colo. 1972); whether to testify at trial, *Menard v. Mitchell*, 430 F.2d 486,
491 (D.C. Cir. 1970); used in sentencing decisions, *United States v. Cifarelli*, 401 F.2d 512 (2d Cir.), cert. denied,
27 393 U.S. 987 (1968). In addition, there is a ‘social stigma’ attached to an arrest record, see *United States v.*
Dionisio, 410 U.S. 1, 10 (1973), and the existence of an arrest record may foreclose employment opportunity.
28 *Menard v. Saxbe*, 498 F.2d 1017, 1024 (D.C. Cir. 1974); *Menard v. Mitchell*, supra, at 490 n. 17” (quoting, *Crow v.*
Kelley, 512 F.2d 752, 754 n. 5 (8th Cir. 1975).

1 stored, and disseminated in a manner to ensure the accuracy, completeness, currency, integrity,
2 and security of such information and to protect individual privacy,” with § 20.20 (a) indicating
3 that here, those regulations apply “to all State and local agencies and individuals collecting,
4 storing, or disseminating criminal history record information processed by manual or automated
5 operations where such collection, storage, or dissemination has been funded in whole or in part
6 with funds made available by the Law Enforcement Assistance Administration subsequent to
7 July 1, 1973, pursuant to title I of the Act.”

8 In *Pruett*, the Sixth Circuit held that the FBI has a duty “to take reasonable measures to
9 safeguard the accuracy of the information in its criminal files” and that the regulations under 28
10 C.F.R. § 20.1 et seq., “are consistent with, and define, that duty.” *Pruett*, at 257. The duty of the
11 defendants with the case at bar is similar, in that defendants had a duty to “[i]nsure that criminal
12 history record information is complete and accurate,” 28 C.F.R. § 20.21 (a), with “accurate”
13 meaning “that no record containing criminal history record information shall contain erroneous
14 information” by “institu[ing] a process of data collection, entry, storage, and systematic audit
15 that will minimize the possibility of recording and storing inaccurate information and upon
16 finding inaccurate information of a material nature, shall notify all criminal justice agencies
17 known to have received such information.” *Id.* at § 20.21(a)(2).

18 The magistrate indicates that under *Roth*, plaintiff fails to establish with case precedent any
19 “constitutional property or liberty right to accurate criminal records” (Doc. at 8) because
20 “constitutionally protected *property* interests ‘are created and their dimensions are defined by
21 existing rules or understandings that stem from an independent source such as state law rules or
22 understandings that secure certain benefits and that support claims of entitlement to those
23 benefits.’” *Id.*, citing *Roth, supra*, 408 U.S. at 577 (emphasis added). This is flawed reasoning in
24 this particular case, notably because plaintiff’s cause of action is not grounded in protected
25 property interests. He is not challenging the validity of a “state law, rule, or understandings that
26 secure certain benefits and that support claims of entitlement to those benefits.” *Id.* 408 U.S. at
27 576-78.
28

1 Instead, plaintiff is contending that outside sanctioned law (e.g., an actual conviction in a court
2 of law for an actual crime), defendants deprived him of employment, housing opportunities,
3 social service benefits; caused heighten police interaction, retarded his ability to seek
4 consideration of a pardon or clemency for his real felony convictions, and places him in fear of
5 being subjected to potential adverse judicial action, such as the “three-strike law” if subjected to
6 a felony indictment again, because they contravened an established regulation when they
7 compiled, prepared, maintained and disseminated inaccurate criminal history information
8 regarding the plaintiff, who has a right to accurate criminal records by way of 28 C.F.R. § 20.

9 The duty imposed upon defendants has already been established, *intra*. The *Pruett* Court found
10 that 28 C.F.R. § 20 et seq., imposes a duty upon the FBI to maintain accurate criminal history
11 information. That same regulation is applicable to local government agencies, such as the
12 defendants here; see, 28 C.F.R. § 20, Subparts B-C), and the Court should also conclude as the
13 Sixth Circuit did and hold that the defendants do have a well-established duty to maintain
14 accurate records.

15
16 Taking the allegations within the complaint as true, *Segal v. Fifth Third Bank, NA*, 581 F.3d 305
17 (6th Cir. 2009), plaintiff plausibly states a claim for relief. See, *Ashcroft v. Iqbal*, 556 U.S. 662
18 (2009). Federal Rule of Civil Procedure 8(a) (2) requires only “a short and plain statement of the
19 claim showing that the pleader is entitled to relief.” “Specific facts are not necessary; the
20 statement need only give the defendant fair notice of what the ... claim is and the grounds upon
21 which it rests.” *Erickson v. Pardus*, 551 U.S. 89, 93 (2007) (quoting *Bell Atlantic Corp. v.*
22 *Twombly*, 550 U.S. 554, 555 (2007)).

23
24
25 **B. The magistrate incorrectly concludes that plaintiff brings this action under federal and**
26 **state law.**
27
28

1 Plaintiff has not brought this action under state law for alleged violation(s) of his civil rights.
2 Any reference plaintiff made with regards to state law statutes pertaining to records management
3 was nothing more than a passing observation and should not have been viewed under a liberal
4 interpretation of Rule 8, Federal Rules of Civil Procedure, as being anything more than such,
5 especially since the magistrate has applied heighten pleading standards upon the plaintiff on
6 other issues within the complaint. As such, the magistrate cursory dismissed plaintiff's claims
7 under the assumption that the defendants are entitled to immunity as addressed below, thus
8 failing to provide any real discussion of the facts much less apply the appropriate legal standards
9 to the claims presented.

10 **C. Immunity under Ohio Revised Code § 2744.01 et seq. is inapplicable**

11
12 Immunity under Ohio Revised Code chapter 2744 sounds great, if plaintiff was bringing state
13 claims against the defendants. In silent acquiescence with the defendants' position; part of
14 which assumed some sort of venue issue existed, the magistrate assumes plaintiff raises state
15 claims, perhaps due to his usage of the word "negligence" or any variation thereof, within his
16 complaints. Plaintiff's usage of the word "negligence" or any variation thereof was purely used
17 in a descriptive nature in conjunction with other terms or phrases plaintiff uses to describe the
18 conduct of the defendants.

19 The body of his complaints and the various pleadings submitted in this case obviously reflect
20 that plaintiff has no interest in bringing or raising state law claims here in federal court, mainly
21 because no adequate state remedies exists, or they do not apply to defendants by way of the
22 Home Rule Amendment located in Section 3, Article XVIII of the Ohio Constitution, which
23 confers sovereignty upon municipalities to "exercise all powers of local self-government" as
24 long as those powers do not conflict with the state's powers, and of course federal powers.

25
26 Here, defendants elected to establish a record keeping practice in accordance to the regulations
27 outlined in 28 C.F.R. § 20 et seq., which mirrors that of the State of Ohio under Ohio Revised
28

1 Code § 149.40,⁴ thus lessening the chances of coming into conflict with state law governing
2 record keeping practices.

3
4 If plaintiff were raising state law claims, he surely would have sought to invoke the Court's
5 pendent jurisdiction prior to doing so. To the extent above, the magistrate's conclusion is loss by
6 the simple fact that plaintiff never sought to raise a state law claim regarding the actions or
7 inactions of the defendants.

8 Since 28 C.F.R. § 20 has been well established for quite some time, as has plaintiff's right to
9 employment, housing, social service benefits, as well as the right to be heard before a judiciary
10 tribunal prior to indicating that he had been convicted of a violent felony where violence was
11 actually noted, and defendants, individual and/or in concert, also cannot claim qualified
12 immunity. Qualified immunity "shields government officials performing discretionary functions
13 from liability for civil damages insofar as their conduct does not violate clearly established
14 statutory or constitutional rights of which a reasonable person would have known." *Barker v.*
15 *Goodrich*, 649 F.3d 428, 433 (6th Cir. 2011).

16 17 **D. Conclusion**

18 Although due process tolerates variances in procedure "appropriate to the nature of the case,"
19 *Mullane v. Central Hanover Trust Co.*, 339 U.S. 306, 313 (1950), it is nonetheless possible to
20 identify its core goals and requirements. First, "[p]rocedural due process rules are meant to
21 protect persons not from the deprivation, but from the mistaken or unjustified deprivation of life,
22 liberty, or property." *Carey v. Phipus*, 435 U.S. 247, 259 (1978). "[P]rocedural due process rules
23 are shaped by the risk of error inherent in the truth-finding process as applied to the generality of

24
25 ⁴ O.R.C. § 149.40 "**Making only necessary records.** The head of each public office shall cause to be
26 made only such records as are necessary for the adequate and proper documentation of the organization, functions,
27 policies, decisions, procedures, and essential transactions of the agency and for the protection of the legal and
28 financial rights of the state and persons directly affected by the agency's activities. Effective Date: 07-01-1985,"
with, 28 C.F.R. § 20.1 "**Purpose.** It is the purpose of these regulations to assure that criminal history record
information wherever it appears is collected, stored, and disseminated in a manner to ensure the accuracy,
completeness, currency, integrity, and security of such information and to protect individual privacy. [Order No.
2258-99, 64 FR 52226, Sept. 28, 1999]."

1 cases." *Mathews v. Eldridge*, 424 U.S. 319, 344 (1976). Thus, the required elements of due
2 process are those that "minimize substantively unfair or mistaken deprivations" by enabling
3 persons to contest the basis upon which a State proposes to deprive them of protected interests.
4 *Fuentes v. Shevin*, 407 U.S. 67, 81 (1972). At times, the Court has also stressed the dignitary
5 importance of procedural rights, the worth of being able to defend one's interests even if one
6 cannot change the result. *Carey v. Piphus, supra*, 435 U.S. at 266-67 (1978); *Marshall v. Jerrico,*
7 *Inc.*, 446 U.S. 238, 242 (1980); *Nelson v. Adams*, 120 S. Ct. 1579 (2000) (amendment of
8 judgement to impose attorney fees and costs to sole shareholder of liable corporate structure
9 invalid without notice or opportunity to dispute).

10 Here, the Court should hold that plaintiff has plausibly stated a claim upon which relief may be
11 granted; that defendants are not entitled to state law immunity since plaintiff brings no state law
12 claims against them; and, defendants are not entitled to qualified immunity because their actions
13 or inactions as alleged violate well established law in which a reasonable person should have
14 known existed. 28 C.F.R. § 20 *et seq.*, existed well before the filing of this action, and
15 defendants should have known it was clearly established considering that it is a pretext to their
16 operational objectives in the first place.

17 **E. Motion for Leave to File Limited Amended Complaint**

18
19 Plaintiff has always looked at his actual causes of action as the premise in which he seeks to
20 remedy. None of the causes of action in the original or amended complaint in this action
21 provides any information that plaintiff sought to impose some sort of state law liability upon the
22 defendants. Only the defendants suggested such in which the magistrate ran with as noted with
23 the glaring similarities in the magistrate's prior Report and Recommendation and the defendants'
24 motions to dismiss. Plaintiff does, however, concede the fact that counts 1-3 fail to provide the
25 'well-established' law in which plaintiff invokes in support of those causes of action, yet based
26 on the pleadings before the Court it should be acknowledged that plaintiff is referencing the
27 Fourteenth Amendment of the United States Constitution, or perhaps the Court will permit
28 plaintiff to amend those three counts to include "Fourteenth Amendment of the United States

1 Constitution” in place of the general statement that defendants violated or acted contrary to
2 “well established law.”

3
4 Amendment, even at this stage, is permissible, to cure defects, such as the lack of inserting the
5 Fourteenth Amendment in place of the phrase, “well established law.” Federal Rule of Civil
6 Procedure 15 (a) (2) holds that outside the 21 day period authorized under subsection (1)(A) of
7 that Rule, “a party may amend its pleading ... with ... the court’s leave” which should “freely
8 give leave when justice so requires.”

9 Plaintiff is a pro se litigant and as such, justice requires that he be permitted to amend his
10 previously amended complaint for the sole purpose of inserting “Fourteenth Amendment of the
11 United States Constitution” in place of “well-established law” within the first three causes of
12 action of his complaint. Both the right to proceed in pro se and liberal pleading standards reflect
13 the modern civil legal system’s emphasis on protecting access to courts. See, e.g., *Phillips v.*
14 *County of Allegheny*, 515 F.3d 224, 230 (3d Cir. 2008) (“Few issues ... are more significant than
15 pleading standards, which are the key that opens access to courts.”). Self-representation has firm
16 roots in the notion that all individuals, no matter their status or wealth, are entitled to air
17 grievances for which they may be entitled to relief. Access then, must not contingent upon
18 retaining counsel, lest the entitlement become a mere privilege denied to certain segments of
19 society. Similarly, because pleading is the gateway by which litigants access federal courts, the
20 drafters of the Federal Rules of Civil Procedure purposefully eschewed strict sufficiency
21 standards. See, *Proceedings of the Institute on Federal Rules* (1938) (statement of Edgar
22 Tolman), *reprinted in* Rules of Civil Procedure For The District Courts Of The United States,
23 301-13 (William W. Dawson ed., 1938).

24 Plaintiff’s request for leave to amend for the purpose of extracting a phrase and inserting another
25 does not disrupt the holdings of *Ashcroft v. Iqbal*, 556 U.S. 662 (2009) and *Bell Atlantic Corp. v.*
26 *Twombly*, supra, nor is it sought in futility, *Foman v. Davis*, 371 U.S. 178 (1962), since the
27 allegations contained within the complaint are plausible absent a technicality which drowns as a
28

1 result of subsequent pleadings by the plaintiff asserting his legal position outside of that
2 technicality.

3
4 For those reasons above, plaintiff moves for leave to submit a second amended complaint to cure
5 the deficiency mentioned.

6
7 Respectfully submitted,

8
9 Christopher Knecht

10
11 Plaintiff in Pro Se