

1 COMES NOW, Plaintiff PAUL CREIGHTON, an individual and brings this action
2 against Defendant CITY OF LIVINGSTON, a California municipal corporation, and Defendant
3 RICHARD WARNE, an individual and in his official capacity, and alleges, on information and
4 belief (except those allegations relating to CREIGHTON himself, which are asserted on personal
5 knowledge), as follows:

6 **PARTIES TO THE ACTION**

7 2. Plaintiff PAUL CREIGHTON ("PLAINTIFF" or "CREIGHTON") was at all times
8 relevant hereto a resident of Merced County, California and an employee of Defendant CITY OF
9 LIVINGSTON, a municipal corporation ("CITY" or "LIVINGSTON") located at 1416 C Street,
10 Livingston, CA 95334. LIVINGSTON is a "person" subject to suit with the meaning of 42
11 U.S.C. Section 1983.

12 3. Defendant RICHARD WARNE was at all times relevant hereto the LIVINGSTON City
13 Manager and he committed the acts described herein with the County of Merced. WARNE is
14 sued for damages in his individual capacity and declaratory and injunctive relief in his official
15 capacity.

16 4. The true names and capacities of Defendants DOES 1 to 20 are unknown to Plaintiff who
17 will amend this complaint to allege such names and capacities as soon as they are ascertained.
18 Each Defendant designated herein as DOE is in some manner legally responsible for the unlawful
19 acts and injuries alleged herein.

20 **GENERAL FACTUAL ALLEGATIONS**

21 5. CREIGHTON is a former LIVINGSTON employee. He worked for LIVINGSTON from
22 June 2004 until he was involuntarily terminated on June 6, 2008—just days after he publically
23 reported the pollution of a CITY water well, and communicated with elected LIVINGSTON
24 officials about it and the CITY's inaction leading to, and exacerbating the public health problem.

25 6. CREIGHTON was hired by LIVINGSTON in June 2004 to serve as its Public Works
26 Director. Prior to working for LIVINGSTON, CREIGHTON was an experienced public servant
27 with expertise on water issues who had drafted a municipal storm water pollution prevention
28 ordinance and who managed multi-million dollar public works projects including ones involving

1 water treatment and distribution. CREIGHTON was also licensed by the State of California in
2 the areas of water treatment, wastewater treatment and water distribution and he continues to
3 hold these licenses.

4 7. At the start of CREIGHTON's employment, a temporary replacement was needed for
5 LIVINGSTON's former City Manager Gerald Forde ("FORDE") and LIVINGSTON asked
6 CREIGHTON to serve as its Acting City Manager in addition to performing his Public Works
7 Director duties. CREIGHTON accepted the added responsibilities and he was voted into the
8 position by the Mayor and City Council.

9 8. CREIGHTON's performance as Public Works Director and Acting City Manager was
10 outstanding. Not only did he bring direction to the Public Works Department, he excelled in his
11 Acting City Manager role including negotiating a \$1,000,000 water well site construction deal.
12 When FORDE returned as the LIVINGSTON City on or before May 2005, he noted that
13 CREIGHTON was faced with a "tremendous task" in his role as Public Works Director and City
14 Manager and that he had "met and exceeded" all of the CITY's expectations.

15 9. As CREIGHTON's employment as the LIVINGSTON Public Works Director continued,
16 he was an invaluable manager and a tremendous asset to LIVINGSTON and its citizens.
17 CREIGHTON had a discipline-free work record and he received multiple favorable performance
18 evaluations and merit increases—including his final one from current City Manager WARNE
19 issued just months before CREIGHTON was fired.

20 10. In late 2005 or early 2006, WARNE was hired as the LIVINGSTON City Manager.
21 WARNE began managing CITY funds/department budgets including one previously managed by
22 CREIGHTON, the CITY's Water Enterprise Fund ("the WEF"). The WEF is used for operating
23 and maintaining the CITY water system.

24 11. While the WEF steadily increased under CREIGHTON's management, CREIGHTON
25 observed that the WEF, under WARNE's management, was being depleted and that there
26 appeared to be accounting discrepancies and inexplicable shifting monetary allocations.
27 CREIGHTON reported his observations to WARNE and, even though it impacted the CITY's
28 Public Works Department, WARNE told CREIGHTON to disregard those matters.

1 12. During WARNE's tenure as Livingston City Manager, LIVINGSTON was working on a
2 publically-funded project known as the Prop 13 Water Line Replacement Project. As it
3 progressed, WARNE pressured CREIGHTON to approve multiple change orders that appeared
4 to benefit current and former City officials and/or persons linked to them. CREIGHTON
5 questioned WARNE's motivation for, and necessity of, these change orders and he explained to
6 WARNE how the requests adversely impacted the budget. WARNE disregarded CREIGHTON
7 and took steps to have these change orders approved.

8 13. During WARNE's tenure as Livingston City Manager, a water rate study needed to be
9 prepared as an initial step to begin the process to approve, and secure, rate increases to replenish
10 the CITY's depleting water funds.

11 14. WARNE hired an outside consultant to prepare the initial water rate study and, when it
12 was completed in 2006, there were numerous complaints about it and it was forced to undergo
13 significant changes. It was ultimately completed in early 2008.

14 15. Before, and after, the revised water rate study was completed, CREIGHTON told
15 WARNE on multiple occasions that it was necessary to submit this study for public and City
16 Council approval so that LIVINGSTON had sufficient funds to safely manage its water supply.
17 WARNE ignored and dismissed CREIGHTON's pleas telling CREIGHTON that he was timing
18 the submission around local elections and he would not submit the completed water rate study
19 until after the LIVINGSTON City Council elections occurred in November 2008.

20 16. In January 2008, Mr. Creighton learned via independent testing that one of the CITY's
21 water wells was polluted with Coliform bacteria (referred to herein as "the POLLUTED
22 WELL"). Because it was not peak water use season, CREIGHTON was able to have the
23 POLLUTED WELL shut down for maintenance which controlled the immediate problem. The
24 situation, however, could not be entirely eliminated and it required monitoring and, eventually, a
25 long-term solution.

26 17. CREIGHTON believed that the POLLUTED WELL posed potential health problems for
27 LIVINGSTON residents, CITY employees and other individuals impacted by the CITY water
28 supply. While CREIGHTON was able to shut down the well in January 2008 for maintenance,

1 this could not have been done in periods of peak water use. If problems with the POLLUTED
2 WELL repeated during peak water use, a CITY well shut down would render the CITY's water
3 pressure dangerously low and cause numerous public health risks (e.g., backflow issues, no or
4 little water for fire suppression, etc.). Conversely, if it was not shut down when such problems
5 arose, the polluted water could contaminate the CITY's water supply. CREIGHTON believed
6 these potential public health risks could be ameliorated by drilling a new well on an emergent
7 basis, but the CITY's funds and WARNE's refusal to submit the water rate study for approval
8 until after local elections prevented this from occurring.

9 18. Due to the public health and safety risks, CREIGHTON continued his pleas to WARNE
10 in 2008 to submit the water rate study for approval. WARNE refused CREIGHTON's pleas; he
11 told him that he wouldn't do so until after the local elections occurred; and he told CREIGHTON
12 that he shouldn't concern himself with the water rate study

13 19. In May 2008, the POLLUTED WELL tested positive once again for total Coliform
14 bacteria. CREIGHTON discussed the situation with non-LIVINGSTON government health
15 officials including the possibility that the POLLUTED WELL may need to shut down. Because
16 it was a period of peak water use, serious health problems would be posed if the well shut down
17 occurred without first adding a new well on an emergent basis.

18 20. Shortly after learning this news, CREIGHTON apprised WARNE about the situation with
19 the POLLUTED WELL, the potential need for a well shut down and the associated health risks.
20 WARNE was dismissive of the news and he refused to move away from his plan to submit the
21 water rate study after local elections were completed. WARNE became angry with
22 CREIGHTON during this conversation and he ended it by warning CREIGHTON to keep quiet
23 about the situation.

24 21. Because CREIGHTON believed that WARNE was ignoring, and exacerbating, a serious
25 potential health hazard, CREIGHTON told LIVINGSTON Mayor Pro Tem and City Council
26 person William Ingram ("COUNCILPERSON INGRAM") and LIVINGSTON Councilmember
27 Rodrigo Espinoza ("COUNCILPERSON ESPINOZA") about the POLLUTED WELL, the
28 health risks posed by the situation, WARNE's plan to delay the water rate study approval until

1 after City elections and the need to get the water rate study approved immediately to help protect
2 the health and safety of LIVINGSTON residents, as well as, CITY employees and other persons
3 that are impacted by the CITY's water supply. These discussions occurred at non-LIVINGSTON
4 owned property, during off-duty time and were not part of CREIGHTON's Public Works
5 Director duties.

6 22. Plaintiff is informed and believes that on or before June 6, 2008, WARNE learned about
7 his conversations with COUNCILPERSON INGRAM and COUNCILPERSON ESPINOZA
8 about the POLLUTTED WELL and WARNE'S plan to delay submission of the water rate study
9 for approval until after local elections.

10 23. On June 6, 2008—just days after CREIGHTON complained to WARNE about health and
11 safety issues related to the POLLUTED WELL and, later, discussed those matters with CITY
12 councilpersons—WARNE summoned CREIGHTON to WARNE's office without any prior
13 notice. When CREIGHTON arrived, WARNE fired CREIGHTON without any explanation.
14 When CREIGHTON asked for the reason, WARNE said, "I'm taking the City in a different
15 direction."

16 24. Prior to commencing this lawsuit, CREIGHTON complied with the California Tort
17 Claims Act and he exhausted all applicable administrative remedies.

18 **FIRST CAUSE OF ACTION**

19 **Violation of 42 U.S.C. §1983 (U.S. Constitution --- First and Fourteenth Amendments)**

20 *(Against Defendants LIVINGSTON, WARNE and DOES 1-20)*

21 25. CREIGHTON hereby incorporates by reference and realleges all preceding paragraphs of
22 this complaint as if fully set forth herein.

23 26. CREIGHTON's communications and dealings with LIVINGSTON City Councilpersons
24 detailed above was conducted by CREIGHTON as a private citizen on a matter of public concern;
25 it outweighed any interest of LIVINGSTON in suppressing that speech and activity; and it was
26 protected under the First and Fourteenth Amendments to the U.S. Constitution.

27 27. LIVINGSTON and WARNE ("DEFENDANTS") violated CREIGHTON's constitutional
28 rights to free speech and association under the First and Fourteenth Amendments to the U.S.

1 Constitution by terminating his LIVINGSTON employment because of his communications and
2 dealings with LIVINGSTON City Councilpersons detailed above. DEFENDANTS acted
3 intentionally and with callous disregard of CREIGHTON's clearly established constitutional
4 rights in doing so.

5 28. As a direct and proximate result of DEFENDANTS' violations of CREIGHTON's
6 constitutional rights, CREIGHTON has suffered severe and substantial damages including lost
7 employment earnings and benefits, past and future, diminished earning capacity, loss of
8 reputation, mental and emotional anguish, litigation costs including attorney's fees and other
9 compensatory damages in an amount to be determined.

10 **SECOND CAUSE OF ACTION**

11 **Violation of California Constitution (Art. 1, §§ 2 and 3)**

12 *(Against Defendants LIVINGSTON, WARNE and DOES 1-20)*

13 29. Plaintiff hereby incorporates by reference and realleges all preceding paragraphs of this
14 complaint as if fully set forth herein.

15 30. CREIGHTON's communications and dealings with LIVINGSTON City Councilpersons
16 detailed above was conducted by CREIGHTON as a private citizen on a matter of public concern;
17 it outweighed any interest of LIVINGSTON in suppressing that speech and activity; and it was
18 protected under Article 1, Sections 2 and 3 of the California Constitution.

19 31. DEFENDANTS violated CREIGHTON's constitutional rights to free speech and
20 association under Article 1, Sections 2 and 3 of the California Constitution by terminating his
21 LIVINGSTON employment because of his communications and dealings with LIVINGSTON
22 City Councilpersons detailed above. DEFENDANTS acted intentionally and with callous
23 disregard of CREIGHTON's clearly established constitutional rights in doing so.

24 32. As a direct and proximate result of DEFENDANTS' violations of CREIGHTON's
25 constitutional rights, CREIGHTON has suffered severe and substantial damages including lost
26 employment earnings and benefits, past and future, diminished earning capacity, loss of
27 reputation, mental and emotional anguish, litigation costs including attorney's fees and other
28 compensatory damages in an amount to be determined.

THIRD CAUSE OF ACTION

Violation of California Labor Code § 98.6

(Against Defendant LIVINGSTON and DOES 1-20)

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4 33. CREIGHTON hereby incorporates by reference and realleges all preceding paragraphs of
5 this complaint as if fully set forth herein.

6 34. Pursuant to California Labor Code § 98.6, an employer may not discharge or discriminate
7 against any employee because of the exercise by the employee, on behalf of himself or others,
8 any rights afforded to him.

9 35. Under the U.S. Constitution (First and Fourteenth Amendments) and California
10 Constitution (Art. 1, § 2), CREIGHTON was entitled to exercise and enjoy free speech and
11 association. CREIGHTON's communications and dealings with LIVINGSTON City
12 Councilpersons detailed above was conducted by CREIGHTON as a private citizen on a matter of
13 public concern; it outweighed any interest of LIVINGSTON in suppressing that speech and
14 activity; and it was protected under the U.S. Constitution (First and Fourteenth Amendments) and
15 California Constitution (Art. 1, § 2).

16 36. As a direct and proximate result of DEFENDANTS' violations of CREIGHTON's
17 constitutional rights, CREIGHTON has suffered severe and substantial damages including lost
18 employment earnings and benefits, past and future, diminished earning capacity, loss of
19 reputation, mental and emotional anguish, litigation costs including attorney's fees and other
20 compensatory damages in an amount to be determined.

FOURTH CAUSE OF ACTION

Violation of California Labor Code § 1102.5

(Against Defendant LIVINGSTON and DOES 1-20)

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24 37. CREIGHTON hereby incorporates by reference and realleges all preceding paragraphs of
25 this complaint as if fully set forth herein.

26 38. Pursuant to California Labor Code § 1102.5(b), an employer may not retaliate against
27 any employee for disclosing information to a government or law enforcement agency, where the
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1 employee has reasonable cause to believe that the information discloses a violation of a state or
2 federal statute, or noncompliance with a state or federal regulation.

3 39. Pursuant to California Labor Code § 1102.5(c), an employer may not retaliate against any
4 employee for refusing to participate in an activity that would result in a violation of a state or
5 federal statute, or noncompliance with a state or federal regulation.

6 40. Pursuant to California Labor Code § 1102.5(d), a report made by an employee of a
7 government agency to his or her employer is a disclosure of information to a government or law
8 enforcement agency pursuant to California Labor Code § 1102.5(a) and (b).

9 41. During CREIGHTON's employment with LIVINGSTON, he disclosed to WARNE
10 and/or CITY councilpersons activity that he had reasonable cause to believe violated a state or
11 federal statute, or noncompliance with a state or federal regulation including, but not limited to,
12 WARNE's management of the CITY'S water funds; WARNE's demands for changes orders to
13 publically-funded projects and CREIGHTON's questioning of WARNE about the demands and
14 the necessity of them; WARNE's refusal to submit the water rate study for public approval until
15 after local elections despite potential public health risks; and WARNE's orders to remain silent
16 about potential health hazards.

17 42. LIVINGSTON violated CREIGHTON's rights under Labor Code § 1102.5 by
18 terminating his LIVINGSTON employment because CREIGHTON engaged in the above-
19 described activity.

20 43. As a direct and proximate result of DEFENDANTS' violations of CREIGHTON's
21 constitutional rights, CREIGHTON has suffered severe and substantial damages including lost
22 employment earnings and benefits, past and future, diminished earning capacity, loss of
23 reputation, mental and emotional anguish, litigation costs including attorney's fees and other
24 compensatory damages in an amount to be determined.

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FIFTH CAUSE OF ACTION

Violation of California Labor Code § 6310

(Against Defendant LIVINGSTON and DOES 1-20)

44. CREIGHTON hereby incorporates by reference and realleges all preceding paragraphs of this complaint as if fully set forth herein.

45. Pursuant to California Labor Code § 6310, an employer may not discharge or discriminate an employee for complaining to his employer about health and safety issues.

46. During CREIGHTON's employment with LIVINGSTON, he disclosed to WARNE and/or CITY councilpersons activity about the POLUTTED WELL, the health risks posed by the situation, WARNE's plan to delay the water rate study approval until after City elections and the need to get the water rate study approved immediately to help protect the health and safety of LIVINGSTON residents, as well as, CITY employees and other persons that are impacted by the CITY's water supply..

47. LIVINGSTON violated CREIGHTON's rights under Labor Code § 6310 by terminating his LIVINGSTON employment because CREIGHTON engaged in the above-described activity.

48. As a direct and proximate result of DEFENDANTS' violations of CREIGHTON's constitutional rights, CREIGHTON has suffered severe and substantial damages including lost employment earnings and benefits, past and future, diminished earning capacity, loss of reputation, mental and emotional anguish, litigation costs including attorney's fees and other compensatory damages in an amount to be determined.

SIXTH CAUSE OF ACTION

Wrongful Termination In Violation Of Public Policy

(Against Defendant LIVINGSTON and DOES 1-20)

49. CREIGHTON hereby incorporates by reference and realleges all preceding paragraphs of this complaint as if fully set forth herein.

50. During CREIGHTON's LIVINGSTON employment and as detailed above, CREIGHTON engaged in constitutionally-protected speech and associational activities and he

1 exercised his rights under the California Labor Code. Accordingly, he was a protected employee
2 pursuant to statutory and constitutional law—both protected public policies under California law.

3 51. LIVINGSTON unlawfully terminated CREIGHTON'S employment in violation of public
4 policy because it fired CREIGHTON because he engaged in constitutionally-protected speech
5 and associational activities, and for engaging in activity protected by the California Labor Code.

6 52. As a direct and proximate result of DEFENDANTS' violations of CREIGHTON's
7 constitutional rights, CREIGHTON has suffered severe and substantial damages including lost
8 employment earnings and benefits, past and future, diminished earning capacity, loss of
9 reputation, mental and emotional anguish, litigation costs including attorney's fees and other
10 compensatory damages in an amount to be determined.

11 **PRAYER FOR RELIEF**

12 WHEREFORE, Plaintiff prays for himself against Defendants, jointly and severally, as follows:

- 13 1. For back pay, front pay, and other special damages according to proof;
14 2. For general damages;
15 3. For reinstatement to his position;
16 4. An award of prejudgment and post judgment interest;
17 5. An award providing for payment of reasonable costs of suit;
18 6. An award of attorneys' fees; and
19 7. Such other and further relief as this Court may deem proper and just.

20 **DEMAND FOR JURY TRIAL**

21 Plaintiff hereby demands a jury trial on all matters triable to a jury.

22
23 DATE: September 2, 2008

LAW OFFICES OF DONALD POTTER

24
25
26 BY: 

27 Donald Potter
28 Attorney for Plaintiff
PAUL CREIGHTON

