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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

L. RICHARD RUNYON, Plaintiff and Appellant, v. BOARD OF TRUSTEES OF THE CALIFORNIA STATE UNIVERSITY et al., Defendants and Respondents.	B195213 (Los Angeles County Super. Ct. No. BC340560)

APPEAL from a judgment of the Superior Court of Los Angeles County. Jane L. Johnson, Judge. Affirmed.

Ganz & Gorsline, Philip J. Ganz, Jr. and Laurie Susan Gorsline for Plaintiff and Appellant.

Goldman, Magdalin & Krikes and Robert W. Conti for Defendants and Respondents.

A tenured university professor claimed he was removed as chair of a department in retaliation for his whistleblower activities. The university investigated his complaint and found the professor's claim of retaliation without merit. The professor filed suit against the university and the dean of the department seeking damages for the alleged unlawful retaliation. The trial court entered summary judgment in favor of the university and dean, finding the professor's action for damages barred because he had failed to exhaust his judicial remedies by first seeking writ relief to overturn the administrative decision. We affirm.

BACKGROUND

Appellant, Richard L. Runyon, has been a professor at respondent California State University Long Beach (CSU) since 1968. In 1991 Runyon was elevated to the position of Chair of the Finance, Real Estate and Law Department of the College of Business Administration.

Respondent, Luis Ma Calingo, became the dean of the College of Business Administration in 2000. In the fall of 2000 Dean Calingo awarded merit increases to the College of Business Administration professors, including Runyon. At a December 2000 meeting of department chairs Runyon complained that Calingo's approval of the $500 merit increase to the chair of the search committee was an illegal payoff for selecting Calingo to be the new dean. Calingo and Runyon met after the meeting. According to Runyon, Calingo told him he could either resign his chair or Calingo would fire him. According to Calingo, Runyon told him he would rather resign than to accept the improper payoff. Calingo understood Runyon's comment to be a verbal resignation from the chair position. Calingo declared the chair position vacant on December 8, 2000. Runyon complained to Calingo's superiors who advised Calingo to rescind the termination and Calingo reinstated Runyon as chair in January 2001.

Runyon voiced numerous other complaints about Calingo beginning shortly after Calingo's arrival at CSU. Runyon believed many of Calingo's decisions or policies affecting the College of Business Administration were either wasteful or illegal. Runyon complained that:

(1) Calingo only spent between three to four days on campus. Calingo commuted to CSU from his home in Fresno and often left the campus on Thursday afternoon or early Friday.

(2) Calingo missed numerous CSU related events which had historically required the dean's presence.

(3) Calingo made frequent trips to Asia largely at CSU expense, trips which did not have an apparent benefit to CSU's College of Business Administration.

(4) Calingo failed to intervene, investigate or punish a professor who got into altercations with personnel in the Finance Department.

(5) Calingo countermanded Runyon's order and permitted professors in Runyon's department to attend a conference in Mexico, despite a budget shortfall, and despite the questionable relevance of the conference to the professors' discipline.

(6) Calingo permitted the College of Business Administration to incur an operating deficit of $400,000 in the 2003/2004 academic year, allegedly because of Calingo's mismanagement.

(7) Calingo refused to reimburse Runyon's department from College of Business Administration funds for the salaries of two professors who requested sick leave for catastrophic health problems.

(8) Calingo offered a new hire a tenured full professor position over the negative vote of the department's tenured faculty.

(9) Calingo undermined him as chair by refusing to accept his recommendation to add a basic finance class to the MBA program.

Four professors in Runyon's department began complaining openly about Runyon's management and leadership skills, in part because Runyon's directives conflicted with Calingo's position. In March 2004, Runyon sent Calingo a series of

memoranda, with copies to the provost, senior vice president and others, detailing his complaints about Calingo and Calingo's management of the College of Business Administration. On April 7, 2004 Runyon met with the provost and vice president and they apparently warned him further public criticism of Calingo would not be tolerated.

In 2003, Calingo had reappointed Runyon to another three-year term as chair of the Finance, Real Estate and Law Department. In his letter of appointment, Calingo charged Runyon with the task of developing curriculum changes, stating, "As regards your leadership of the Department, I expect you to lead the Department in designing curriculum improvements that will result in changes in the Finance Option's curriculum requirements (including the design of new courses, as appropriate), thereby ensuring that the Finance program is attuned to the needs of the marketplace. I would like to see these processes commence no later than the Fall 2003 semester so that curriculum change proposals could be submitted to the Undergraduate Curriculum Committee by the end of Spring 2004."

At Runyon's annual performance review on April 26, 2004 Runyon met with Calingo to review his proposed curriculum, and the adequacy of the processes Runyon had employed to vet his proposed curriculum. Calingo expressed dissatisfaction with Runyon's performance and asked him to step down as chair of the Finance, Real Estate and Law Department, stating he had lost confidence in Runyon's ability to chair the department. Calingo's stated reason was that Runyon had failed to meet the conditions of his letter of appointment to the chair position. Runyon refused to resign his chair voluntarily and Calingo terminated his chairmanship.

Runyon believed Calingo's stated reason of inadequate curriculum review was merely a pretext for the dean's actual motive of retaliation for his earlier whistleblower activities. Runyon filed a whistleblower complaint under Executive Order No. 822, CSU's internal procedures for addressing whistleblower claims, alleging CSU and Calingo had retaliated against him for his whistleblower activities in violation of the California Whistleblower Protection Act. (Gov. Code, § 8547 et seq., further unmarked statutory references are to the Government Code.)

Executive Order No. 822 establishes a procedure for responding to whistleblower complaints by CSU employees who allege they have been retaliated against for having engaged in protected disclosures under the California Whistleblower Protection Act. Executive Order No. 822 implements section 8547.12 of the California Whistleblower Protection Act (pertaining exclusively to employees of CSU) and its purpose "is to provide a timely and effective procedure for the resolution of such complaints."[1] No hearing is required or provided under Executive Order No. 822.

Runyon's whistleblower complaint detailed his concerns about Calingo's and CSU's "improper governmental activities,"[2] summarized above. Runyon's complaint

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[1] "Under [Executive Order No.] 822, the vice chancellor of human resources is designated to receive and make decisions regarding written complaints of retaliation. At the vice chancellor's discretion, the investigation may be conducted by an external investigator. The complainant is obligated to cooperate with the investigator, and in an initial interview with the investigator has the opportunity to present a list of witnesses and documentary evidence in support of the complaint. The investigator must interview the complainant, review any supporting documentation supplied by the complainant and any response to the complaint supplied by the campus or employees alleged to have taken retaliatory action, interview witnesses, and take any other action the investigator deems appropriate. The investigation must be completed no later than 60 days prior to the expiration of 18 months from the date the complaint was filed. 'The vice chancellor for human resources shall transmit the summary and conclusion of the investigation to the complainant within ten (10) days of the vice chancellor's receipt of them from the investigator(s). The complainant may file a written response to the summary and conclusion with the vice chancellor within fourteen (14) days of receipt of the summary and conclusion.' Thereafter, 'The vice chancellor of human resources shall respond to the complainant with a letter of decision within fourteen (14) days of receipt of the complainant's written response or the expiration of the time limits for the complainant to file a response. . . . This letter of decision will constitute the final CSU decision regarding the complaint, pursuant to [] section 8547.12(c).'" (*Ohton v. Board of Trustees of the California State University* (2007) 148 Cal.App.4th 749, 754, fn. 3.)

[2] Section 8547.2 defines "improper governmental activity" very broadly and includes theft of government property, willful omission to perform one's duty, and economically wasteful or inefficient activities. (§ 8547.2, subd. (b).)

alleged he had been retaliated against for having made these "protected disclosures"[3] and specified three actions which he claimed had been retaliatory: (1) Calingo's removal of him as chair of the Finance, Real Estate and Law Department without first asking the department faculty for a vote of confidence; (2) Calingo's denial of his request to transfer $50,000 to the Student Managed Investment Fund Account; and (3) Calingo's refusal to let Runyon keep his old telephone number after he was no longer chair of the department.

CSU began an investigation of Runyon's complaint in accordance with Executive Order No. 822. Ellen Bui, CSU's Manager of Human Resources, conducted the investigation. Over a four-month period, Bui interviewed 13 witnesses, interviewed Runyon three times, corresponded with Runyon and his counsel, and reviewed reports. She finalized her investigation by preparing a 19-page report which concluded that while Runyon suffered an adverse employment action by being removed as chair of the department, the decision to remove him as chair was based on a legitimate business decision unrelated to any retaliatory motive.

Runyon filed a 14-page response to the report and summary of the investigation. Thereafter, CSU issued a timely letter of determination. In this letter, the vice chancellor reviewed the investigator's findings, Runyon's response, and drew her own conclusions. The vice chancellor ultimately found that Runyon had made a protected disclosure when he reported to the provost his concerns about the dean's attendance and that he had suffered an adverse employment action when Calingo removed him as chair. However, the vice chancellor agreed with the human resource manager that the investigation showed "there was no causal connection between [Runyon's] protected disclosure and the dean's decision to remove [him] from the chair position." Accordingly, CSU denied Runyon's complaint.

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[3] A "protected disclosure" "means any good faith communication that discloses . . . information that may evidence (1) an improper governmental activity . . . ." (§ 8547.2, subd. (d).)

Runyon filed an action for damages against CSU and Calingo claiming unlawful retaliation under the California Whistleblower Act. (§ 8547.12.)[4]

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[4] Section 8547.12 applies exclusively to CSU employees and provides:

"(a) A California State University employee, including an officer or faculty member, or applicant for employment may file a written complaint with his or her supervisor or manager, or with any other university officer designated for that purpose by the trustees, alleging actual or attempted acts of reprisal, retaliation, threats, coercion, or similar improper acts for having made a protected disclosure, together with a sworn statement that the contents of the written complaint are true, or are believed by the affiant to be true, under penalty of perjury. The complaint shall be filed within 12 months of the most recent act of reprisal complained about.

"(b) Any person who intentionally engages in acts of reprisal, retaliation, threats, coercion, or similar acts against a California State University employee, including an officer or faculty member, or applicant for employment for having made a protected disclosure, is subject to a fine not to exceed ten thousand dollars ($10,000) and imprisonment in the county jail for up to a period of one year. Any university employee, including an officer or faculty member, who intentionally engages in that conduct shall also be subject to discipline by the university.

"(c) In addition to all other penalties provided by law, any person who intentionally engages in acts of reprisal, retaliation, threats, coercion, or similar acts against a university employee, including an officer or faculty member, or applicant for employment for having made a protected disclosure shall be liable in an action for damages brought against him or her by the injured party. Punitive damages may be awarded by the court where the acts of the offending party are proven to be malicious. Where liability has been established, the injured party shall also be entitled to reasonable attorney's fees as provided by law. However, any action for damages shall not be available to the injured party unless the injured party has first filed a complaint with the university officer identified pursuant to subdivision (a), and the university has failed to reach a decision regarding that complaint within the time limits established for that purpose by the trustees. Nothing in this section is intended to prohibit the injured party from seeking a remedy if the university has not satisfactorily addressed the complaint within 18 months.

"(d) This section is not intended to prevent a manager or supervisor from taking, directing others to take, recommending, or approving any personnel action, or from taking or failing to take a personnel action with respect to any university employee, including an officer or faculty member, or applicant for employment if the manager or supervisor reasonably believes any action or inaction is justified on the basis of evidence separate and apart from the fact that the person has made a protected disclosure.

"(e) In any civil action or administrative proceeding, once it has been demonstrated by a preponderance of the evidence that an activity protected by this article was a contributing factor in the alleged retaliation against a former, current, or

CSU and Calingo filed a motion for summary judgment. They argued Runyon's action was barred because (1) a precondition to filing a valid suit for damages was reversal of the adverse quasi-judicial decision through administrative mandamus review under Code of Civil Procedure section 1094.5,[5] and (2) Runyon's evidence he was retaliated against because of his whistleblower activities was insufficient as a matter of law.

Runyon filed opposition. He argued there were triable issues of material fact whether his removal as chair was based on retaliatory motives. He also argued he was not required to seek relief through administrative mandamus because (1) section 8547.12,

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prospective employee, the burden of proof shall be on the supervisor, manager, or appointing power to demonstrate by clear and convincing evidence that the alleged action would have occurred for legitimate, independent reasons even if the employee had not engaged in protected disclosures or refused an illegal order. If the supervisor, manager, or appointing power fails to meet this burden of proof in an adverse action against the employee in any administrative review, challenge, or adjudication in which retaliation has been demonstrated to be a contributing factor, the employee shall have a complete affirmative defense in the adverse action.

"(f) Nothing in this article shall be deemed to diminish the rights, privileges, or remedies of any employee under any other federal or state law or under any employment contract or collective bargaining agreement.

(g) If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Chapter 12 (commencing with Section 3560) of Division 4 of Title 1, the memorandum of understanding shall be controlling without further legislative action."

Runyon's complaint also alleged a violation of Labor Code section 1102.5, another whistleblower statute designed to protect employees in private industry.

[5] This argument put Runyon on notice one of the grounds for CSU's summary judgment motion was that Runyon's failure to first seek and obtain a writ of mandate reversing CSU's final determination barred his action for damages. CSU's failure to identify the applicable writ in this factual context did not negate the fact Runyon received notice that one of CSU's arguments was that his failure to exhaust any judicial remedy before filing suit provided it a complete defense to the action. (Code Civ. Proc., § 437c, subd. (a); compare *Gonzales v. Superior Court* (1987) 189 Cal.App.3d 1542, 1545 [only the grounds specified in the notice of motion may be considered by the trial court]; with *Luri v. Greenwald* (2003) 107 Cal.App.4th 1119, 1125 [the purpose of stating the grounds for relief in a notice of motion is to cause the moving party to "'sufficiently define the issues for the information and attention of the adverse party and the court'"].)

subdivision (c) permitted a CSU employee to file suit directly if the employee believed CSU had not "satisfactorily addressed" the complaint, (2) administrative mandate under Code of Civil Procedure section 1094.5 was inapplicable because Executive Order No. 822 does not require a hearing,[6] and (3) a writ proceeding would have been futile because of the deference usually accorded administrative decisions and because of the lack of an adequate record for the court to review. Runyon pointed out it was not until he conducted discovery in his civil action that CSU provided Runyon the investigator's raw notes—the evidence he needed to establish his claims.

In their response, CSU and Calingo argued that even if an evidentiary hearing was not required or provided, Runyon was nevertheless required to exhaust his judicial remedies before filing suit by seeking instead an ordinary writ of mandate under Code of Civil Procedure section 1085.

After hearing extensive argument on the motion the trial court ruled an action for damages under section 8547.12, subdivision (c) was precluded if CSU conducted an investigation in good faith and rendered a timely decision, unless the employee first sought judicial review of CSU's final decision by way of a writ of mandate and succeeded in having the decision reversed. Because Runyon did not pursue any type of writ relief the court concluded his action for damages was barred. The court also rejected Runyon's challenges to the writ review requirement claiming that (1) he was exempt from the writ requirement because his complaint was not "satisfactorily addressed" by CSU, (2) CSU's procedures for reviewing complaints was inadequate, and (3) pursuing writ relief was futile with an inadequately developed evidentiary record. The court entered judgment in favor of CSU and Calingo and Runyon appealed.

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[6] Code of Civil Procedure section 1094.5 pertains to a writ "for the purpose of inquiring into the validity of any final administrative order or decision made as the result of a proceeding in which by law a hearing is required to be given, . . . " (Code Civ. Proc., § 1094.5, subd. (a).)

DISCUSSION

Standard of Review

A motion for summary judgment must be granted if all the papers submitted show that there is no triable issue as to any material fact and that the moving party is entitled to judgment as a matter of law. (Code Civ. Proc., § 437c, subd. (c).)

"'"A defendant seeking summary judgment has met the burden of showing that a cause of action has no merit if that party has shown that one or more elements of the cause of action cannot be established [or that there is a complete defense to that cause of action]. . . ."'" (*Raghavan v. Boeing Co*. (2005) 133 Cal.App.4th 1120, 1132.)

We review the trial court's grant of summary judgment de novo and decide independently whether the parties have met their respective burdens and whether facts not subject to triable dispute warrant judgment for the moving party as a matter of law. (*Intel Corp. v. Hamidi* (2003) 30 Cal.4th 1342, 1348; *Guz v. Bechtel National, Inc*. (2000) 24 Cal.4th 317, 334; Code Civ. Proc., § 437c, subd. (c).)

"Satisfactorily Addressed"

The California Whistleblower Protection Act (§ 8547 et seq.) prohibits retaliation against state employees who "report waste, fraud, abuse of authority, violation of law, or threat to public health . . . ." (§ 8547.1.) The Act authorizes "an action for damages" to redress acts of retaliation. (§§ 8547.8, subd. (c) [state employees], 8547.10, subd. (c) [University of California employees], 8547.12, subd. (c) [California State University employees].) These three statutes have similar purposes but have somewhat different criteria for pursuing an action for damages.

For state employees, section 8547.8, subdivision (c) specifies, "any action for damages shall not be available to the injured party unless the injured party has first filed a

complaint with the State Personnel Board pursuant to subdivision (a), and the board has issued, or failed to issue, findings pursuant to Section 19683."[7]

For University of California employees, section 8547.10, subdivision (c) states, "any action for damages shall not be available to the injured party unless the injured party has first filed a complaint with the university officer . . . , and the university has failed to reach a decision regarding that complaint within the time limits established for that purpose by the regents." The Supreme Court recently interpreted this statutory language to "mean[] what it says," namely, "a civil action for damages against the University is available only when the plaintiff employee has first filed a complaint with the University and the University has failed to reach a timely decision on the complaint." (*Miklosy v. Regents of the University of California* (2008) 44 Cal.4th 876, 898 (*Miklosy*).) The *Miklosy* court acknowledged a damages action in state court might afford a more favorable forum, greater procedural protections, and better further the purposes of the whistleblower act, but concluded the "appropriateness of granting these procedural protections to University whistleblowers is a matter of policy that is not for this court to determine." (*Miklosy, supra*, 44 Cal.4th at p. 890.)

In the case of retaliation against a CSU employee, the preconditions for filing a civil action are similar, but with one notable exception. Section 8547.12, subdivision (c) provides "any action for damages shall not be available to the injured party unless the injured party has first filed a complaint with the university officer . . . , and the university has failed to reach a decision regarding that complaint within the time limits established for that purpose by the trustees. *Nothing in this section is intended to prohibit the injured party from seeking a remedy if the university has not satisfactorily addressed the complaint within 18 months*." (Italics added.) This last sentence does not appear in the

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[7] Whether a prerequisite for an action for damages is that the state employee must receive a favorable decision from the board, or must first seek judicial review of an unfavorable decision from the board, are issues currently under review by the Supreme Court. (See, e.g., *Board of Chiropractic Examiners v. Superior Court*, review granted April 9, 2007, S151705.)

other provisions. In noting the difference, the *Miklosy* Court opined that "[t]he addition of the last sentence, and specifically the modifier 'satisfactorily,' rais[ed] the possibility that a court might find the state university's decision unsatisfactory (though timely) and on that basis permit a damages action. (*Ohton v. Board of Trustees of the California State University* (2007) 148 Cal.App.4th 749, 765.)" (*Miklosy, supra*, 44 Cal.4th at p. 886.) However, the *Miklosy* Court expressed no view "on the substantive content, if any, of the term 'satisfactorily' in section 8547.12, subdivision (c)." (*Ibid*.)

Runyon contends the phrase "satisfactorily addressed" suggests the Legislature believed that merely addressing a complaint within 18 months was not enough, but that it also must be "addressed to the satisfaction of the employee." Thus, Runyon asserts this clause authorized him to bring his damages action because, from his perspective, CSU did not "satisfactorily address[]" his complaint. (§ 8547.12, subd. (c).) CSU, in contrast, argues the correct interpretation of the phrase "satisfactorily addressed" means CSU rendered a final decision within the prescribed 18 months.

The Court of Appeal addressed these very arguments in *Ohton v. Board of Trustees of the California State University, supra,* 148 Cal.App.4th 749 (*Ohton*). In *Ohton*, a football coach contended he was retaliated against after he reported violations of the National Collegiate Athletic Association rules and other improprieties during an official CSU audit. (*Id*. at pp. 754-755.) He filed a complaint with CSU under Executive Order No. 822 and CSU hired outside counsel to investigate his complaint, which was denied. (*Id*. at pp. 756-761.) Ohton filed a civil action for damages against CSU under section 8547.12, subdivision (c). Like Runyon, he did not challenge CSU's final determination by filing a petition for writ of mandate. (*Id*. at p. 762.) CSU moved for summary judgment, claiming (1) it had timely addressed Ohton's complaint and (2) Ohton's action was barred by his failure to exhaust his judicial and administrative remedies. (*Ibid*.) The trial court granted the motion on the ground CSU had timely addressed Ohton's complaint. (*Id*. at p. 763.)

On appeal, CSU argued Ohton's action for damages was barred because it had timely addressed his complaint by reaching a final decision within the statutorily required 18 months. In *Ohton*, as here, CSU asserted the term "satisfactorily addressed" in section 8547.12, subdivision (c) should be interpreted as simply requiring that the complaint be addressed through its internal procedures under Executive Order No. 822 and a decision reached within 18 months. The court rejected this interpretation, reasoning it would read the words "satisfactorily addressed" out of the statute. (*Ohton, supra,* 148 Cal.App.4th at p. 764.)

The court also rejected Ohton's argument, identical to Runyon's in this case, that the phrase "satisfactorily addressed" meant "to the subjective satisfaction of the whistleblower." "Ohton's subjective interpretation of 'satisfactorily addressed' can be rejected out of hand. Such an approach would render the statutory and administrative proceedings mandated by section 8547.12 and EO 822 nugatory; a complainant need only assert that he is unhappy with the decision in order to overturn it. We find no indication that the Legislature intended such a farfetched standard." (*Ohton, supra,* 148 Cal.App.4th at p. 765.) The court concluded Ohton's alternative "objective good faith" interpretation of the phrase "satisfactorily addressed" was "closer to the mark." The words "satisfactorily addressed" "imput[ed] a clear obligation on CSU to act in objective good faith in fulfilling its duties under the [California Whistleblower Protection Act]." (*Ibid*.)

We find the *Ohton* court's analysis of the proper interpretation of "satisfactorily addressed" in section 8547.12, subdivision (c) persuasive and adopt it as our own. "Satisfactorily addressed" has to mean more than simply "timely rendered," as CSU argues, or the phrase would be eliminated from the statute. At minimum, the phrase must mean a thorough investigation of whistleblower claims of retaliation, conducted in good faith, consistent with the spirit and purpose of the California Whistleblower Protection Act.

We also reject the subjective interpretation of "satisfactorily addressed" that Runyon urges. His interpretation would provide no standard for determining when filing an action for damages would be appropriate. We do not believe the Legislature would have included these words if they lacked any substance and their meaning depended on the particular whistleblower's view of the outcome of the administrative proceedings. Accordingly, as in *Ohton*, we reject Runyon's claim "satisfactorily addressed" in section 8547.12, subdivision (c) means a whistleblower is entitled to file an action for damages whenever the outcome of the administrative proceedings is not to the whistleblower's satisfaction.

Exhaustion of Judicial Remedies

Runyon contends he was entitled to proceed directly to an action for damages because CSU's internal proceeding was a sham, it failed to provide him with minimal due process, and as such, failed to "satisfactorily address[]" his complaint of retaliation for his whistleblower activities. Runyon's assertion is not supported by existing authority.

Notably, the whistleblower in *Ohton* made the same arguments Runyon makes in this court. The *Ohton* court rejected these arguments and concluded review and reversal of an adverse decision by writ of mandate was a precondition for filing a suit for damages under section 8547.12, subdivision (c). The *Ohton* court explained, "We reject Ohton's contention that he was not required to challenge the CSU proceeding and final decision by filing a petition for writ of mandate. There is no indication from the statute or its legislative history that an exception to the requirement for a writ of mandate was contemplated when section 8547.12 was enacted. CSU correctly notes 'courts should not presume the Legislature in enactment of statutes intends to overthrow long-established principles of law unless that intention is made clearly to appear either by express declaration or by necessary implication.' [Citation.] Abandonment of the mandamus requirement is not implied by the granting of a civil remedy because the statute requires the complainant to establish that CSU has not 'satisfactorily addressed' his complaint as a condition precedent to sue for damages." (*Ohton, supra,* 148 Cal.App.4th at p. 767.)

The conclusion a prerequisite for filing a suit for damages under section 8547.12, subdivision (c) is review and reversal of an adverse administrative decision by securing a writ of mandate is reinforced by numerous decisions in analogous situations. (See, e.g., *Johnson v. City of Loma Linda* (2000) 24 Cal.4th 61, 71 [when employees have availed themselves of the administrative remedies a statute affords, and have received an adverse quasi-judicial finding, that finding is binding on subsequent discrimination claims under the FEHA unless set aside through a timely mandamus petition]; *Westlake Community Hosp. v. Superior Court* (1976) 17 Cal.3d 465, 484 ["so long as such a quasi-judicial decision is not set aside through appropriate review procedures the decision has the effect of establishing the propriety of the [defendants'] action. . . . Accordingly, we conclude that plaintiff must first succeed in overturning the quasi-judicial action before pursuing her tort claim against defendants"]; *California Public Employees' Retirement System v. Superior Court* (2008) 160 Cal.App.4th 174, 185 ["If the Legislature intends to allow whistleblowers to abort the administrative proceedings by filing a civil action without first overturning adverse findings through a writ of mandate, it will have to make its intentions explicit"]; *Pomona College v. Superior Court* (1996) 45 Cal.App.4th 1716, 1724 ["Important public policy interests are served by providing a uniform practice of judicial, rather than jury, review of quasi-judicial administrative decisions"]; *McGill v. Regents of the University of California* (1996) 44 Cal.App.4th 1776, 1785 ["Judicial review of most public agency decisions is obtained by a proceeding for a writ of ordinary or administrative mandate"]; *Bunnett v. Regents of the University of California* (1995) 35 Cal.App.4th 843, 848 ["The proper method of obtaining judicial review of most public agency decisions is by instituting a proceeding for a writ of mandate"].)

Any doubt whether Runyon was required to secure a ruling in a writ proceeding that CSU had not "satisfactorily addressed" his complaint as a precondition to filing his action for damages has been dispelled by the Supreme Court in *Miklosy*. In *Miklosy*, as noted, the Supreme Court determined a damages action was precluded when the University of California timely decided a whistleblower retaliation complaint in its favor. In so holding, the court pointed out even this narrow construction of the statute "did not

leave the University's decision completely unreviewable [because] an action for a writ of mandate provides limited review . . . ." (*Miklosy, supra*, 44 Cal.4th at p. 890.) The concurring opinion in *Miklosy* similarly observed that review by mandate would be available to reverse adverse determinations of whistleblower retaliation claims. The concurring opinion commented, "[b]ecause the University's process for resolving whistleblower retaliation complaints does not include the right to an evidentiary hearing before a neutral hearing officer, substantial-evidence review by petition for writ of administrative mandate is not available. (See Code Civ. Proc., § 1094.5.) On petition for ordinary mandate (*id*., § 1085), the agency decision is reviewed on the much laxer and more limited arbitrary-and-capricious standard (*Strumsky v. San Diego County Employees Retirement Assn*. (1974) 11 Cal.3d 28, 34-35, fn. 2; *Valnes v. Santa Monica Rent Control Bd*. (1990) 221 Cal.App.3d 1116, 1119), effectively insulating University decisions so long as they are timely made under regular procedures and are not facially irrational." (*Miklosy, supra*, 44 Cal.4th. at p. 904, fn. 2, conc. opn. of Werdegar.)

More importantly to this case, the *Miklosy* Court stated that a *court* might find that CSU had not "satisfactorily addressed" a whistleblower's complaint and *permit* a damages action on that basis. (*Miklosy, supra*, 44 Cal.4th at p. 886 ["the modifier 'satisfactorily,' raises the possibility that a court might find the state university's decision unsatisfactory (though timely) and on that basis permit a damages action"].)[8] These comments from the *Miklosy* court reinforce the view a prerequisite for pursuing an action for damages under section 8547.12, subdivision (c) is review and reversal of an adverse administrative decision through a proceeding for writ of mandate.

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[8] A whistleblower's complaint might not be "satisfactorily addressed" if, in a given instance, CSU's "mechanism for fairly evaluating whistleblower retaliation complaints" was not viable, or if CSU's "consideration of a complaint [was so] perfunctory or arbitrary as to violate the due process guarantee of the state or federal Constitutions." (*Miklosy, supra*, 44 Cal.4th at p. 890, fn. 4.)

Throughout these proceedings Runyon has steadfastly asserted he was entitled to bring an action for damages because his complaint was not "satisfactorily addressed" and thus writ review of the adverse decision was not required,[9] or would have been futile because of the absence of a developed evidentiary record, and the extreme deference trial courts usually afford administrative decisions in mandamus proceedings. These shortcomings might well describe ordinary mandate review. However, to excuse the requirement of exhausting judicial remedies by first obtaining a writ of mandate as a prerequisite to filing an action for damages would run counter to a substantial body of law precluding an action for damages unless the challenged adverse administrative decision is first overturned in a mandate proceeding. In this case, we conclude Runyon's failure to successfully establish through a writ proceeding that his claim had not been "satisfactorily addressed" operated as a bar to his action for damages. (*Ohton*, *supra*, 148 Cal.App.4th at p. 769.) CSU was thus entitled to judgment as a matter of law and the trial court did not err in granting summary judgment in its favor.

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[9] Because we reject Runyon's subjective interpretation of the phrase "satisfactorily addressed," we necessarily reject his claim this language means a whistleblower dissatisfied with the result of the resolution of his or her retaliation claim has a direct right of action for damages as an *exception* to the general rule of requiring review of administrative decisions by writ of mandate. (Compare, *Antebi v. Occidental College* (2006) 141 Cal.App.4th 1542, 1547 [Education Code section 94367 authorizes a direct action for injunctive or declaratory relief to prevent enforcement of any rule which subjects a student to disciplinary sanctions based solely on the student's exercise of First Amendment rights]; *Schifando v. City of Los Angeles* (2003) 31 Cal.4th 1074, 1079-1080, 1085 [it would frustrate the Legislature's intent to fight workplace discrimination to require an employee to exhaust the city charter's internal administrative remedy, in addition to receipt of a FEHA right to sue letter, before filing suit under FEHA].)

DISPOSITION

The judgment is affirmed. Respondents are entitled to their costs on appeal.

NOT TO BE PUBLISHED.

HASTINGS, J.*

We concur:

MALLANO, P. J.

ROTHSCHILD, J.

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* Retired Associate Justice of the Court of Appeal, Second Appellate District, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.