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S168950

IN THE

Supreme Court
OF THE STATE OF CALIFORNIA

SUPREME COURT
FILED

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Deputy

L. RICHARD RUNYON,
Plaintiff and Appellant,

vs.

BOARD OF TRUSTEES OF THE CALIFORNIA STATE UNIVERSITY, et al.,
Defendants and Respondents.

ANSWER TO BRIEF ON THE MERITS

AFTER A DECISION BY THE COURT OF APPEAL
SECOND APPELLATE DISTRICT, DIVISION ONE
[2d Civil No. B195213]

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I. INTRODUCTION

Government Code §8547.12 of the California Whistleblower Protection Act is specifically directed to California State University. It requires that the CSU establish a procedure under which its employees may file complaints alleging that they have been retaliated against for having made protected disclosures of alleged CSU misconduct. It also gives a CSU employee the right to file a civil action seeking damages arising from retaliation but only if (1) the employee has filed an internal, administrative complaint of retaliation; (2) CSU has failed to reach a decision on the complaint within the time allowed under its procedure; and, (3) CSU has failed to satisfactorily address the complaint within 18 months.

The issues before this Court are: (1) must a CSU employee exhaust administrative remedies by filing a complaint with the University and successfully challenging the University's decision by means of a writ of mandate before being able to maintain a civil action for damages under the California Whistleblower Protection Act; and, (2) what standard governs the determination whether the University "satisfactorily addressed" the employee's complaint.

The University maintains that its decision on the merits of the employee's complaint of retaliation can only be reviewed by a court, through a writ proceeding, and that only the court can determine whether that discretionary decision "satisfactorily addressed" the employee's complaint. When determining whether the University "satisfactorily addressed" the employee's complaint, the court should apply the ordinary standard of review to determine whether the complaint was comprehensively investigated and the parties afforded due process.

In contrast, Runyon contends that no writ proceeding is required because he, not a court, has the right under the Act to determine whether his complaint was satisfactorily addressed. If he is unhappy with the University's determination, Runyon contends he may proceed with a civil action for damages, even if an objective reviewer would conclude that the University conducted a thorough investigation and rendered a thoughtful and rational determination. His contention, however, is not supported by the statute or by recent decisions from this Court.

CSU is well aware that this Court has recently addressed the California Whistleblower Protection Act provisions governing

complaints filed by University of California employees, in *Miklosy v. The Regents of the University of California* (2008) 44 Cal.4th 876, and governing complaints by other State employees to the State Personnel Board, in *State Board of Chiropractic Examiners (Arbuckle)* (2009) 45 Cal.4th 963. The provision at issue here is profoundly different from these other two provisions.

All three provisions, 8547.8, 8547.10, and CSU's 8547.12, require an affected employee to file an internal complaint claiming retaliation as a precondition to a right to file a civil action for damages. The provision involving the State Personnel Board under review in *Arbuckle*, section 8547.8, also requires as a prerequisite to a right to sue for damages that the State Personnel Board issue or fail to issue findings. This Court in *Arbuckle* reasoned that since preclusion of a civil action for damages did not depend upon whether the SPB issued a final decision, and did not depend upon the quality or sufficiency of any decision, no writ proceeding was required.

The University of California statute under review in *Miklosy*, section 8547.10, requires as a prerequisite to a right to sue for damages that UC fail to reach a decision on the complaint within the time lines established by the Regents in its complaint procedure. In

Miklosy, this Court seemed to reason that while preclusion of a civil action for damages did not depend upon the substance or quality of UC's decision but only its timing, a writ proceeding was not a necessary prerequisite to bringing a civil action. Nonetheless, this Court recognized that UC's procedures had to meet minimal standards of fairness, and noted that a UC employee could use a writ proceeding to challenge an arbitrary process.

CSU's statute, section 8547.12, is profoundly different from the SPB and UC statutes. Here, preclusion of a civil action for damages not only requires that CSU make a final decision within the University's self-created time lines but also that its decision "satisfactorily addresses" the complaint within 18 months. A civil action for damages will be precluded only if CSU has made a decision, done so within its own time lines and made a decision within 18 months that satisfactorily addresses the complaint.

This Court in *Miklosy* recognized that CSU's statute is significantly different from UC's and that the substance of CSU's decision had to be evaluated by a court to determine whether the condition precluding a right to file a civil action – that CSU's decision satisfactorily addressed the complaint – had been met. Since a civil

action "shall not be available" unless CSU has failed to satisfactorily address the employee's complaint, section 8547.12 mandates, as this Court seems to have acknowledged in *Miklosy* when addressing CSU's statute, that a writ proceeding is required in order to challenge CSU's decision.

The controlling legal authority requires that a writ action be taken before filing a civil claim. Accordingly, Runyon loses on this appeal because he never filed a mandamus action. The resolution of the remaining issues framed by this court — namely, which writ procedure is appropriate and how is "satisfactorily addressed" determined — although important, are unnecessary in order to resolve this appeal in CSU's favor.

A. Summary of Factual Background

In this case, Professor Lowell Richard Runyon sued the CSU claiming retaliation in violation of the California Whistleblower Protection Act, 8547.12. Runyon claims that Luis Calingo, who was at all relevant times the Dean of the College of Business Administration at CSU's Long Beach campus, retaliated against him by removing him as Chairperson of the Department of Finance, Real

Estate and Law, after complaining about what he believed to be inappropriate and wasteful actions on Dean Calingo's part.

Runyon filed his complaint pursuant to an internal process created in Executive Order 822 that the University's Chancellor issued in response to the WPA. Executive Order 822 requires the University to undertake an investigation into the complaint that includes interviewing the charging party, the person or persons who allegedly retaliated against the charging party, and receiving and reviewing of documentary evidence. After reviewing all of the evidence, a summary of findings is issued and provided to the complaining party, who may then file a response. The Vice Chancellor for Human Resources, located in the systemwide headquarters for all 23 CSU campuses, then reviews the investigatory report, its conclusions, the employee's response to the report, if any, and CSU's response to the employee's response. The Vice Chancellor is then required to issue a final determination within specified time limits.

In this case, the University found that Runyon was removed from his position as Chair for legitimate, independent business reasons and that there was no retaliation in violation of 8547.12. Not satisfied with this decision, Runyon filed a civil action for damages in

the Los Angeles Superior Court. **Runyon failed, however, to first challenge the University's administrative decision via a writ of mandate.** The University filed a summary judgment motion arguing that Runyon's civil action was barred because he had not first filed and succeed on a writ of mandamus. The trial court granted the University's motion, and the Court of Appeal affirmed, agreeing that Runyon was barred from a civil action because he failed to file and

II. STATEMENT OF THE FACTS

Runyon's recitation of the facts offers a dramatic, and often hyperbolic, recounting of Runyon's removal as chair of the Finance, Real Estate and Law Department at CSU Long Beach's College of Business Administration and the alleged wrongdoings of Dean Calingo, the college's dean. As an initial matter, CSU denies Runyon's substantive allegations that his removal was retaliatory or Dean Calingo's activities, that form the basis of his initial complaint, were wasteful or otherwise inappropriate. **This appeal, however, concerns procedural, rather than substantive, issues that include deciding whether an employee must successfully pursue a writ challenging the University's decision before bringing a civil action for damages, and deciding what standard determines whether the**

complaint is satisfactorily addressed, and who makes that determination.

Therefore, Runyon's substantive facts are not relevant to this appeal. The following uncontested procedural facts, however, are germane to determining this matter.

A. The CSU Adopted an Internal Policy To Investigate Claims of Retaliation in Violation of the Whistleblower Act.

The CSU's Chancellor's Office, which is the headquarters for all 23 CSU campuses, issued Executive Order 822 ("EO 822"), in response to § 8547.12. It establishes an internal system designed to address complaints of retaliation for whistleblowing activity. A complaining employee must sign a statement under penalty of perjury setting forth the details of the alleged improper governmental activity and the names of the individuals involved in the activity. EO 822 requires the Chancellor's Office to review and investigate the complaint. This investigation includes interviewing relevant witnesses and reviewing relevant documents submitted by the charging party as well as from those who allegedly engaged in the retaliatory conduct and documents the investigator obtains from third parties.

EO 822 mandates that all CSU employees cooperate with the investigation and provide truthful answers. The investigator is required to send a report to the Vice Chancellor for Human Resources who will issue summary findings and conclusions to the complaining party. The complainant may then offer a written response to the investigator's findings within 14 days after receipt of the summary report. Thereafter, the Vice Chancellor is required to issue a letter of final determination constituting the CSU's decision regarding the Complaint, pursuant to section 8547.12 (c). (1 AA 81, 1 AA 258-265[1]).

B. Runyon Filed a Whistleblower Retaliation Complaint Which the Chancellor's Office Fully Investigated and Issued a Timely Finding.

Runyon filed a timely complaint pursuant to EO 822, alleging retaliation in violation of the Whistleblower Act. (3 AA 739, 4 AA 823-865).

Upon receipt of Runyon's complaint, CSU carefully followed its procedures and all of the requirements of EO 822. The Chancellor's Office conducted an investigation and issued its summary and conclusions. (1 AA 81, 1 AA 180-181, 1 AA 251-256). Runyon

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[1] This process is described in detail in *Ohton v. Board of Trustees of the CSU* (2007) 148 Cal.App.4th 749, 754 fn. 3.

submitted a response setting forth his contentions, as well as additional evidence. (1 AA 81, 1 AA 181-183, 1 AA 266-279). After considering Runyon's response and the additional evidence he submitted, the Vice Chancellor for Human Resources issued her letter of determination. (1 AA 82, 1 AA 184-186, I AA 280-285). The final determination stated that there had been no retaliation against Runyon, and instead, he had been properly removed from the chair position because he failed to undergo the proper curriculum review. (1 AA 280-285).

C. Runyon Filed a Civil Action Without First Seeking to Challenge the CSU's Final Determination via a Writ of Mandate.

After receiving the final determination, Runyon filed his civil action. He alleged unlawful retaliation in violation of Government Code § 8547.12 and Labor Code § 1102.5, both whistleblower retaliation statutes. He acknowledged within the complaint that he had filed his claims with the Chancellor's Office. (1 AA 8-30). Runyon did not, however, file a petition for a writ of mandamus, whether as a claim within his civil action or as an independent proceeding.

D. The Trial Court Granted the University's and Calingo's Motion for Summary Judgment.

The University and Dean Calingo filed a motion for summary judgment, contending Runyon's civil action was barred, as a matter of law because (1) Runyon had failed to challenge the Chancellor's Office's findings via a writ of mandate; (2) Govt. Code § 8547.12 prohibited a civil action because the CSU issued a decision within 18 months; and (3) Runyon lacked sufficient evidence to establish retaliation in violation of the Whistleblower Protection Act. (1 AA 41-63).

In his Opposition brief, Runyon argued that he did not have to first file a petition for a writ of mandamus because no "hearing" (as Runyon defined it) had taken place. Runyon further argued that the phrase "satisfactorily addressed" in Govt. Code §8547.12 (c) could only mean that the University's response must meet the aggrieved employee's satisfaction. Finally, Runyon argued that there were disputed facts as to whether his retaliation claim could withstand the dispositive motion. (3 AA 468-492).

The University argued that one of the purposes of requiring review by writ of mandate is to review challenges to due process in the

context of the administrative proceedings, rather than in a civil action. The University also argued that Appellant's interpretation of the phrase "satisfactorily addressed" defies the basic precepts of statutory construction. (6 AA 1303-1316).

The trial court granted summary judgment to the University and Dean Calingo on the grounds that the Runyon must first file and succeed on a writ of mandate rather than directly challenging the Chancellor's Office's final determination in a civil action. The trial court noted that challenging the fairness of the administrative hearing was a fundamental part of the purpose of mandamus. (6 AA 1339-1341). As a separate and independent basis for granting the motion, the trial court also found that the action was barred because the CSU issued a decision within 18 months of the time Runyon filed his administrative complaint.

E. The *OHTON* Decision Was Issued During the Pendency of Runyon's Appeal, and Runyon's Request to Depublish *Ohton* was Denied by this Court.

After the trial court granted the University's summary judgment motion, but before Runyon filed his opening brief with the Court of Appeal, the Fourth District Court of Appeal issued its decision *Ohton*. The *Ohton* court held that a CSU employee must successfully

challenge the University's administrative decision by way of a writ of mandate before a civil action can be maintained. Because this decision signaled clear defeat for Runyon, he requested that this Court depublish the *Ohton* decision. (See docket for Case Number S152843). The Court denied Runyon's request. 2007 Cal. LEXIS 6958.

F. The Court of Appeal Agreed that Runyon was Required to Pursue a Writ and Affirmed the Lower Court's Granting of Summary Judgment.

The Court of Appeal issued an unpublished decision that affirmed the trial court's ruling. The Second District panel agreed with the *Ohton* Court that the only way to challenge the university's administrative determination is by way of a writ of mandate, and that Runyon had to successfully do so in order to bring a civil action. This Court later granted Runyon's Petition for Review.

III. ISSUES PRESENTED

This Court framed the issues to be determined on review as follows:

1. Must an employee of the CSU exhaust administrative and judicial remedies with respect to a challenged administrative decision in order to bring a claim under the California Whistleblower Protection Act?

2. What standard governs the determination whether the employee's internal complaint has been "satisfactorily addressed" by the CSU?[2]

IV. LEGAL ARGUMENT

A. Overview of the Act and the Arguments of the Parties.

Before any action can be filed, an aggrieved employee must first succeed on a petition for a writ of mandate. Because Runyon failed to do so, his civil action alleging violation of § 8547 (c) is barred.

The California Whistleblower Protection Act, Gov. Code section 8547[3] *et seq.*, as this Court noted in *Miklosy,* "prohibits retaliation against state employees who 'report waste, fraud, abuse of authority, violation of law, or threat to public health.'" *Miklosy*, 44 Cal.4th at 882. Employees who believe they have been subjected to retaliation may, under certain limited circumstances, file a civil action for damages. Sections 8547.8 (c), 8457.10 (c), and 8547.12 (c).

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[2] Runyon in his opening brief framed the issues differently. This brief, however, relies on the issues set forth by this Court and responds accordingly.

[3] All statutory references shall be to the Government Code unless otherwise noted.

Section 8547.12 (c) provides:

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. (emphasis added).

Runyon insists that the final sentence means that he may initiate a civil action if *he* believes in his own subjective view that the CSU failed to satisfactorily address his complaint. This interpretation was soundly rejected in *Ohton* as well as the Court of Appeal in this matter, and for good reason. "Such an approach would render the statutory and administrative proceedings mandated by § 8547.12 and EO 822 nugatory; a complainant need only assert that he is unhappy with the decision in order to overturn it." *Ohton,* 148 Cal.App. 4th at 765

Rather, the *Miklosy* and *Ohton* cases make clear that it is up to the courts during the course of mandamus review to determine whether a civil action may go forward. During the writ process, the court must determine whether the CSU adequately investigated the complaint, making sure that the administrative process was comprehensive and respected due process. If the court finds that the University conducted a slipshod investigation, or that it failed to provide appropriate redress should the evidence show that illegal retaliation took place, then the court can determine that the CSU failed

to satisfactorily address the complaint, and thus permit a civil action. *Miklosy,* 44 Cal.4th at 891, fn. 4; *Ohton,* 148 Cal.App.4th at 769.

Based upon the prime case authorities on this issue, combined with the time-honored and familiar rules of statutory construction, this is the only conclusion that makes sense.

B. CSU Employees Must Both Exhaust Their Administrative Remedy and Prevail on a Writ Before They Can File a Civil Action Pursuant to § 8547.12.

An aggrieved CSU employee who wishes to pursue a civil action pursuant section 8547.12 (c) must exhaust administrative remedies, by filing an internal complaint with the CSU, and judicial remedies, by challenging the CSU's determination on the complaint via a writ of mandate. The court in *Johnson v. City of Loma Linda* (2000) 24 Cal.4th 61 explained the distinction between exhaustion of administrative and judicial remedies. The "requirement of exhaustion of judicial remedies is to be distinguished from the requirement of exhaustion of administrative remedies. [Citation] Exhaustion of *administrative* remedies is 'a jurisdictional prerequisite to resort to the court.' [Citation]" *Id.* at 70.

Exhaustion of judicial remedies by way of the writ process is the time-honored manner in which to challenge an administrative

decision. “[T]he function of the writ of mandate is to compel the performance of a duty which the law specifically enjoins and which existed at the time of the alleged failure to act.” *Forest Lawn Co. v. City of West Covina* (1966) 244 Cal.App.2d 343, 346. *See also Ohton*, 148 Cal.App.4th at 766 ("Judicial review of most public agency decisions is obtained by a proceeding for a writ of ordinary or administrative mandate.")

Accordingly, aggrieved CSU employees claiming a section 8547.12 (c) violation must first exhaust the internal grievance procedure mandated by subparagraph c of the statute, and implemented through Executive Order 822. If the university issues a timely decision, then the employee must challenge that finding by succeeding in the mandamus process by being able to prove to the reviewing court that the University failed to “satisfactorily address” the employee’s complaint because CSU's investigatory process was so slipshod that it failed to be conducted in good faith and respect due process, or that if a violation was found in the internal process, the CSU failed to properly rectify the matter.

1. CSU employees must exhaust their administrative remedies in order to proceed with a claim for damages pursuant to Section 8547.12.

Section 8547.12 (c) provides that an aggrieved CSU employee may pursue a civil remedy against the University and any employee who "engages in acts of reprisal, retaliation, threats, coercion, or similar acts..." But the statute contains a condition precedent:

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. (Emphasis added.)

Runyon argues that the only prerequisite to filing a civil action is to file the internal complaint, "because section 8547(c) *itself* says so." AB at 53. Runyon's argument discards the second part of that same sentence, i.e., the requirement that the University *must also* fail to issue a timely decision, or that a court determine that the University failed to satisfactorily address the final decision within 18 months.

Accordingly before a court obtains jurisdiction over an employee's complaint, the employee must file an internal complaint, thus triggering the process set forth in E.O. 822. In addition, the University must either fail to issue a timely decision or fail to satisfactorily address the complaint within 18 months before a civil action may be maintained.

2. CSU employees must first file, and succeed, on a petition for a writ of mandate and demonstrate that the University failed to "satisfactorily address" the internal complaint before they can sue for damages pursuant to 8547.12.

Runyon argues that he was not required to file a petition for a writ of mandamus in order to challenge the CSU's final determination, and bases this claim on the public policy concerns discussed in this Court's *Arbuckle* decision. But the whistleblower statute in *Arbuckle* is significantly different than CSU's statute. Furthermore, a review of the three key published cases interpreting the three different statutes, *Arbuckle, Miklosy* and *Ohton*, reveal that nothing in *Arbuckle* supports Runyon's position. Rather, this Court's ruling in *Miklosy* and the Court of Appeal's decision in *Ohton* are the most applicable and govern this case.

a. *Arbuckle*

Arbuckle involves a whistleblower retaliation claim brought pursuant to section 8547.8. The aggrieved employee worked State Board of Chiropractic Examiners, and reported what she considered to be inappropriate actions by the Board and its Executive Director.

Arbuckle believed she had been retaliated against because of her reporting activity. She filed a complaint with the State Personnel Board alleging violation of section 8547 (c). The State Personnel Board's executive officer issued an opinion finding no retaliation in violation of the statute. Rather than exercise her option to appeal the executive officer's decision to a hearing before an administrative law judge, she filed a civil action alleging retaliation pursuant to subparagraph (c).

The State filed a summary judgment motion that the trial court denied. The Court of Appeal, however, issued an alternative writ staying the trial court's proceedings and later found that Arbuckle failed to exhaust her administrative remedies because she did not petition the State Personal Board for a hearing before an administrative law judge. The Court of Appeal also found that Arbuckle needed to file for writ relief if her request had been denied.

This Court, however, disagreed, and based its decision on section 8547.8's plain language, which notably is considerably different from language in the CSU statute. As the Court stated:

> [Section 8547.8 (c)] includes an important caveat: "However, any action for damages *shall not be available* . . . unless the injured party has first filed a complaint with the State Personnel Board . . . , and the board has *issued, or failed to issue, findings pursuant to Section 19683.*" (§ 8547.8(c), italics added.) Section 8547.8(c) refers only to the issuance of "findings," nothing more. On its face, it does not require the complaining employee to petition the State Personnel Board for a hearing before an ALJ, nor does it require the employee to seek writ review of the board's findings.
>
> *Arbuckle,* 45 Cal.4th at 971.

The court reasoned that the language "any action for damages *shall not be available* . . . unless the injured party has first filed a complaint with the State Personnel Board. . . . and the board has *issued, or failed to issue, findings pursuant to Section 19683,*"

provides that **regardless of the outcome**, an aggrieved employee had a direct path to a civil damages action after filing with the SPB.

In contrast, the CSU statute specifically requires a finding that the CSU's administrative determination "satisfactorily addressed" the employee's complaint. This review of the **quality** of the administrative determination is not required by the SPB statute. Accordingly, *Arbuckle*'s interpretation of the SPB statute does not, as Runyon claims, require the same interpretation of the CSU statute, in light of the key differences in language.

b. *Miklosy*

In *Miklosy*, this Court considered whether a University of California employee could sue the UC under § 8547.10 if the University had issued a timely response to the employee's complaint.

Section 8547.10 (c) provides in pertinent part, "[h]owever, any action for damages shall not be available ... unless the injured party has first filed a complaint with the [designated] university officer ..., *and the university has failed to reach a* decision regarding the complaint within the time limits established for that purpose by the regents." *Miklosy*, 44 Cal.4th at 886 (emphasis by the court).

In construing the UC's statute, this Court concluded:

> In short, the function of *section 8547.10, subdivision (c)* appears to be limited to enforcing the University's internal mechanism for resolving disputes by providing an alternative secondary remedy that is available only when the University's internal mechanism fails to operate. As long as the University completes in a timely fashion its own internal dispute-resolution process, the alternative remedy of a damages action is unavailable. If, however, the University's dispute-resolution process fails to function, the injured party is protected by the statutory alternative of bringing a damages action in state court, which has the potential to be made more costly to the University. *Id.* at 888-889.

Much like the SPB statute, the UC statute does not require any qualitative analysis to determine whether the prerequisite to filing a civil action has been met. With the SPB statute, the only determination is whether the SPB acted or failed to act. With the UC statute, the only determination is whether the UC failed to act within the specified time limit. But with the CSU statute, the prerequisite to

filing a civil action is a finding that the CSU did not "satisfactorily address" the employee's complaint. That determination is not objectively determinable as is the prerequisite in the SBP and UC statutes, but rather it necessarily requires a qualitative analysis, which is precisely what a writ review is designed for.

This Court compared the UC and CSU statutes, and noted section 8457.12 (c)'s final sentence, "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." This Court commented that the addition of the last sentence **"raises the possibility that a *court* might find the state university's decision unsatisfactory (though timely) and on that basis *permit* a damages action."** *Id.* (emphasis added, parenthetical by the Court).[4] The Court clearly found the additional language in CSU's statute requires a qualitative analysis by the court and depending on the outcome, may also permit a civil action for damages.

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[4] But while the *Miklosy* court acknowledged the last sentence in the CSU statute, it stated, in this regard, "[W]e express no view on the substantive content, *if any* of the term 'satisfactorily' in section 8548.12, subdivision (c)" *Miklosy*, 44 Cal.4th at 886.

This Court further acknowledged that while an aggrieved UC employee may achieve a more favorable result in a civil action, such an action "is not an additional source of relief over and above whatever the University awards or fails to award; rather, it is a backup remedy available only when the University has failed to timely resolve the whistleblower complaint." *Id.* at 891.

Even if the UC issues a finding within its time limits, this Court determined that the University of California could not ride roughshod over a charging employee. "The University must provide a reasonable mechanism for fairly evaluating whistleblower retaliation complaints, and the University's consideration of a complaint cannot be so perfunctory or arbitrary as to violate the due process guarantee of the state or federal Constitutions." *Id* at fn. 4. This Court further noted that the final decision was not unreviewable, but that "an action for writ of mandate provides limited review ..." *Id.* Accordingly, this Court stated that the only means of challenging the University of California's final decision is by obtaining a writ of mandate. Justice Werdegar, in her concurrence, also noted that judicial review of a timely University of California determination would be via a writ of mandate, pursuant to C.C.P. § 1085. *Id.* at 904, fn. 2.

Both the majority and concurring opinions in *Miklosy* were concerned about the potential for abuse by the universities due to the internal nature of the investigatory process, but noted that such a possibility cannot restate the statute's plain language:

> We recognize the possibility of abuse in the self-policing mechanism that the Legislature has established to prevent whistleblower retaliation at the University, but because we find no compelling evidence of legislative error, and because the statutory scheme is neither absurd nor inherently unfair, we must construe the law as written by the Legislature. *Id.* at 898, fn. 6.

And while Justice Werdegar found that this Court's interpretation of § 8547.10 (c) "borders on the absurd" because it appears to be contrary to the intent of the Whistleblower Protection Act (the same argument Runyon makes in this case), the fact that the statute is clear in its wording prevented the *Miklosy* Court from exercising its power to not interpret the statute pursuant to its literal meaning. *Id.* at 905.

This Court concluded that "section 8547.10, subdivision (c), means what it says: 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." *Id.* at 898.

Likewise, this Court should find that the CSU statute means what it says. The plain language in the CSU statute requires a determination that the CSU failed to satisfactorily address the employee's complaint as a prerequisite to filing a civil action. Its literal meaning should be enforced here.

c. *Ohton*

In *Ohton*, the only published case directly addressing CSU's section 8547.12, an athletic coach sued the CSU alleging whistleblower retaliation. The trial court granted the CSU's summary judgment motion because the university timely addressed the coach's complaint. The Court of Appeal, while rejecting the CSU's contention that a timely decision barred any civil action pursuant to subparagraph (c), also rejected Ohton's contention that a civil action could ensue if the *employee* was not satisfied with the University's final determination.

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 § 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,* 148 Cal.App. 4th at 765 (emphasis added), *accord. Runyon*, Slip Op. at 13.

Moreover, the *Ohton* court stated that the CSU statute "does not 'guarantee' the complainant a civil remedy. **Before a civil complaint for damages can proceed, the complainant is required to establish that CSU has not 'satisfactorily addressed the complaint.'** (cite)." *Id.*

In order to determine what "satisfactorily addressed" means, the *Ohton* court noted the following:

> Standards for judging the legal sufficiency of an administrative proceeding *are well established under mandamus*. '[A] cardinal rule of statutory construction [is] that the Legislature is presumed to have knowledge of existing judicial decisions and to have enacted statutes in their light.' (cite) *There is no reason to conclude*

> *either from the words of the statute* or its legislative history that the words 'satisfactorily addressed' signaled a departure from well-established mandamus standards and procedures." *Id.* at 765-766 (emphasis added).

The *Ohton* court continued to describe the two types of available writ relief, i.e. ordinary review pursuant to C.C.P. § 1085, or administrative review pursuant to C.C.P. § 1094.5. Ohton argued that the existence of a civil remedy nullified the need to first file and succeed on a writ. The *Ohton* court, however, soundly rejected his theory, stating:

> **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 than an exception to the requirements for a writ of mandate was contemplated when *section 8547.12* was enacted. CSU correctly notes 'courts should not presume the Legislature in the enactment of statutes intends to overthrow long-established principles of law unless the 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."** (citation) ... Further, **Ohton's claim that writ proceedings were not contemplated under *section 8547*.12 must be rejected** because such an interpretation would act to deprive many complainants of the protection of the statute." Id. at 767 (emphasis added).

Ohton, like Runyon in this matter, claimed that procedural deficiencies in EO 822 allowed him to directly file a civil claim without mandamus review. The *Ohton* court, however, made clear that if the CSU failed to conduct a fair investigation, then Ohton's remedy was *not a civil action*, but instead court review of the CSU's conduct in his particular case. "Ohton cannot circumvent administrative mandamus review by seeking redress for alleged procedural and due process deficiencies in the dismissal process. *That is precisely the purpose of mandamus review -- to ferret out such*

flaws and rectify them"'. (citation) *Id.* at 769.

The *Ohton* court gave substantial thought and consideration as to how the phrase "satisfactorily addressed" dovetails into the remainder of subparagraph (c). Mandamus is the traditional manner for reviewing administrative decisions and, as the *Ohton* court noted, nothing in the CSU statute indicates a Legislative intent to discard this process. *Ohton* makes clear it is the *court*, through the mandamus process, that will determine whether an employee's complaint alleging whistleblower retaliation pursuant to subparagraph (c) was satisfactorily addressed.

Accordingly, *Ohton*'s well-reasoned analysis of the operation of the CSU statute should be applied to this appeal.

d. *Runyon*[5]

Runyon argued before the Court of Appeal that he was exempt from the traditional mandamus requirement due to the addition of the "satisfactorily addressed" language in the CSU statute. In other words, Runyon argued, like *Ohton*, that the CSU's decision must be to *his* satisfaction. And, like the *Ohton* court, the *Runyon* court rejected

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[5] The CSU does not rely upon *Runyon* as authority for its arguments. This Answer does, however, discuss the appellate court's reasoning as background to the University's legal argument.

this argument, stating:

> 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.
>
> *Runyon*, Slip Op. at 14.

And the *Runyon* court further relied upon *Miklosy* in rejecting Runyon's argument that he did not first need to file for mandamus:

> 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 [*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 ..." *Id.* at 15-16, citing *Miklosy,* 44 Cal.4th at 890.[6]

The *Runyon* court found its decision soundly rooted in *Miklosy's* statement "that a *court* might find that CSU had not 'satisfactorily addressed' a whistleblower's complaint and *permit* a damages action on that basis." (citation) *Id.* at 12. Therefore, the *Runyon* court agreed with *Ohton* that it was up to the court, via the mandamus process, to determine whether the CSU satisfactorily addressed the retaliation complaint.

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[6] The *Runyon* court further noted Justice Werdegar's concurring opinion in *Miklosy* in which the Justice stated that review of the UC's decision would be via mandamus pursuant to C.C.P. § 1085.

Runyon further argued at the appellate court level, as well as well as before this Court, that he did not have to seek mandamus review of the University's final decision because its investigation was a "sham." But the *Runyon* court agreed with *Ohton* that mandamus review is particularly applicable because it is designed to address any due process or procedural deficiencies raised by the charging employee. *Id* at 14-15.

Accordingly, the appellate court in this case found *Ohton's* reasoning persuasive and ruled accordingly, rejecting Runyon's claim that he could file directly in court, and instead affirming the CSU's position that he first had to bring, and prevail upon, a writ of mandate.

V. THESE RECENT AUTHORITIES CONFIRM THAT CSU EMPLOYEES CLAIMING WHISTLEBLOWER RETALIATION MUST FILE FOR MANDAMUS AND PERSUADE THE COURT THAT THE UNIVERSITY FAILED TO SATISFACTORILY ADDRESS THEIR COMPLAINT.

A. Runyon's Interpretation Fails to Consider the Entire Statute in Context.

Runyon is asking this Court to take its construction of nearly identical language in *Miklosy*, as well as the Fourth District Court of Appeal's *Ohton* decision and turn each on its head by instead adopting an *Arbuckle* standard, notwithstanding that the key statutory language

that supports the *Arbuckle* holding **appears nowhere in the CSU statute.**

There is no express definition of the phrase "satisfactorily addressed" within the Act. It is hornbook law that courts, when interpreting statutes, must follow the fundamental principle that "[t]he words of the statute must be construed in context, keeping in mind the statutory purpose, and statutes or statutory sections relating to the same subject must be harmonized, both internally and with each other, to the extent possible." *Dyna-Med v. Fair Employment & Housing Comm'n* (1987) 43 Cal. 3d 1379, 1387. *See also American Liberty Bail Bonds, Inc. v. Garamendi* (2006) 141 Cal.App. 4th 1044, 1052 (court is to review statutory framework as a whole and harmonize it with the statutory scheme).

In *Hassan v. Mercy American River Hospital* (2003) 31 Cal. 4th 709, 715, this Court stated:

> The words of the statute should be given their ordinary and usual meaning and should be construed in their statutory context. (Citations). These canons generally preclude judicial construction that renders part of the statute "meaningless or inoperative." (Citation). In

addition, words should be given the same meaning throughout a code unless the Legislature has indicated otherwise. (Citations).

To accept Runyon's interpretation and allow a civil action to be brought by an unsatisfied complainant would allow the exception to impermissibly swallow the rule. In a similar context, the court in *Summerfield v. Windsor Unified School District* (2002) 95 Cal.App. 4th 1026, rejected the appellant's construction of a statute within the Education Code regarding the requirements for a teacher to accrue time toward tenure. The court noted the appellant's interpretation of an exception in the second paragraph of that statute "swallows the rule stated in the first. *Clearly such a construction, which renders the entire statute surplusage, is disfavored.*" *Id.* at 1033 (emphasis added). The same holds true here. Runyon's claimed exception in the last sentence contravenes the express language of the preceding part of the statute.

The last two sentences in Govt. Code § 8547.12 (c) cannot be harmonized with Runyon's proffered construction, because the statute's plain language limits access to a civil action:

> [A]ny action for damages shall not be available to the injured party unless the injured party has first filed a complaint with the university ... and the university has failed to reach a decision regarding that complaint within the time limits established for that purpose by the trustees.

Runyon's interpretation that the phrase "satisfactorily addressed" means to the complainant's satisfaction fails to acknowledge these limitations. Rather, his interpretation glosses over this language, and instead goes directly to the last sentence, in which he determines that the complaint must be addressed to his subjective satisfaction.

Courts consistently reject these kinds of strained statutory constructions where the interpretation of one provision of a statute negates the remainder of the statute. See, e.g., *Dubins v. Regents of California* (1994) 25 Cal.App. 4th 77, 83 (context is required to give meaning to individual words in statutes); *Coachella Valley Mosquito and Vector Control Dist. v. Calif. Public Employment Relations Board* (2005) 35 Cal. 4th 1072, 1089-90 (court will not give meaning to a

"critical word or phrase" omitted from one of two statutes that are part of the same scheme when to do so would crate an anomaly between the statutes within the same scheme).

Accordingly, the phrase "satisfactorily addressed" must be reconciled with the straight-forward construction by this Court of § 8547.10 (c) in *Miklosy*. This Court in *Miklosy*, in reliance on *Ohton,* found the solution:

> "The addition of the last sentence, and specifically 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**.' (See *Ohton v. Board of Trustees of the Cal. State Univ.* (2007) 148 Call.App.4th 749, 765, 56 Cal.Rptr.3d 111)'" (emphasis added) *Miklosy* at 886.

This language dovetails nicely into the language in C.C.P. sections 1094.5 and 1085, which govern the writ of mandamus process. C.C.P. § 1094.5 provides, in pertinent part, "Where the writ is issued for the purpose of inquiring into the validity of any administrative order ... the case shall be heard by the *court* sitting

without a jury." (emphasis added). And C.C.P. § 1085 provides, in pertinent part, "A writ of mandate may be issued by any *court* to any inferior tribunal ..." (emphasis added).

B. Runyon's Interpretation is Not Supported by *Arbuckle* and is Not Compelled by Public Policy Considerations.

Runyon argues that the *Arbuckle* holding should be adopted in this case at because in *Arbuckle,* this Court addressed the public policy considerations that form the Whistleblower Protection Act. But there is nothing *Ohton* or *Miklosy*, whether as a holding or in *dicta*, that provides any support to Runyon's position that as a matter of public policy, he is guaranteed, if he so desires, a civil court action for damages, because only he shall be the arbiter of whether a complaint is satisfactorily addressed. In fact, the *Miklosy* court rejected the idea that the policy of deterrence should drive this Court to ignore the plain language contained in the UC statute:

> Plaintiffs assert that the availability of a civil remedy by which an employee could seek compensatory damages, punitive damages, and attorney fees would serve to deter whistleblower retaliation. That may well be true, but a statutory statement of purpose does not override the

> express limits the Legislature has placed in the statutory text; rather, the purpose is advanced only to the extent and in the manner the statutory text has specified. Tenfold damages might also deter whistleblower retaliation, but the statutory text does not impose such damages, and they are not therefore awarded. *Miklosy*, 44 Cal.4th at 897.

Applying the rules of statutory construction, it is clear that if the Legislature wanted CSU employees to have the same access to the civil courts as other state employees, then the Legislature knew how to do it, because it did that very thing when it revised the SPB statute (*see* discussion below). The fact that it did not do so strongly suggests that the Legislature intended for there to be a difference.

Accordingly, the reasoning in *Miklosy* and *Ohton* apply to this case. As noted above, both decisions acknowledge that a **court** may find, through the writ process, whether the CSU followed its procedures that include a comprehensive investigation that respected due process, whether the conclusion is appropriately supported, and in

the situation that called for some kind of remedy, whether such remedies were provided.

C. The Legislative History of the Whistleblower Statutes Makes Clear That The Legislature Intended For CSU Complaints to be Addressed Internally, Consistent With The Procedures Adopted by the University of California System.

The *Ohton* court noted section 8547.12's legislative history, "states that the CSU whistleblower protection statute should track" the University of California statute. *Ohton*, 148 Cal.App.4th at 764. The Assembly committee's report on the CSU statute provides that "'[t]his bill would set up an in-house grievance procedure and legal remedies for CSU employees who suffer reprisal for disclosing improper governmental activities *similar to that provided to University of California employees.*'" (citation) *Id.*

The Legislature, in enacting § 8547.10 and § 8547.12, created the incentive to shield the institutions from civil liability providing they each create an internal procedure for addressing claims of employees who believe they were the victims of retaliation for alleged whistleblowing. Such a procedure is consistent with the Whistleblower Act, because it creates an internal process by which the

universities can quickly and efficiently investigate and, if necessary, respond to retaliation complaints. It also provides a less onerous method for employees to have the universities address their retaliation claims.

This Court's discussion of sections 8547.8 and 8547.12 is also instructive. In 1986, the Legislature enacted former section 10548 which applied to state employees, and stated that "'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 ... , and the board has failed to reach a decision regarding any hearing conducted pursuant to Section 19683.'" (citation) *Miklosy*, 33 Cal.4th at 891. Earlier drafts of the legislation did not, however, contain this limitation. In objecting to the lack of such a condition, the Department of Personnel Administration stated:

> This measure would seemingly permit an employe[e] to have his or her case investigated and heard by the [State Personnel Board] and then, if the findings and ruling are not to the employee's liking, to file with the court for a new trial. This is a departure from the current procedure which permits the court to simply determine whether the

Board decision (for or against an employee) is supported by the substantial evidence in the existing record. No new court trial is held.'" (citation) *Id.*

Thus, the Department objected to the Board's hearing process as nothing more than an exhaustion requirement was necessary before filing a civil action. *Id.* The revised and approved bill contained the new limitation, thus "restricting damages actions to those cases in which the State Personnel Board failed to reach a timely decision; in all other cases, the State Personnel Board proceeding was the employee's exclusive remedy" subject only to writ review. *Id.* at 892.

In 1988, the Legislature enacted former section 10550, which addressed University of California employees, adopting section 10548's language. "It follows, therefore, that the Legislature likewise did *not* intend the University's internal proceeding to be a mere exhaustion requirement. Rather, it expressly sought to restrict damages to those cases in which the University failed to reach a timely decision on the complaint; in all other cases, the University proceeding was to be the employee's exclusive remedy." *Id.*

The Legislature repealed §§ 10548 and 10550 in 1993, and in their place enacted §§ 8547.8 and 8547.10 and added 8547.12.[7] In 2001, the Legislature amended section 8547.8 to include its current language, giving state employees the right to sue for damages, regardless of whether the State Personnel Board issued, or failed to issue, a determination. It made, however, no such change to sections 8547.10 and 8547.12. *Id.* at 893.

As previously noted, section 8547.12's legislative history provides "that the CSU whistleblower protection statute should track" the University of California statute when § 8547.12 was enacted in 1993. *Ohton*, 148 Cal.App.4th at 764. Therefore, it is significant that the legislature radically altered § 8547.8 to allow complainant a direct route to a civil action for damages regardless of whether the State Personnel Board issued, or failed to issue, a decision. The University of California statute, which the CSU statute was to track, remained unchanged.

While the Legislature amended legislation to allow a direct route to court for state employees under the SPB statute, the failure to

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[7] The Legislature added the "satisfactorily addressed" language when it enacted the CSU statute.

provide the same type of access for UC and CSU employees bolsters the CSU's position that the university statutes were intended to be different.

Runyon urges this Court to ignore the plain language of section 8547.12 (c) and instead follow the reasoning in *Arbuckle*, as this Court's decision in that case noted that its interpretation of § 8547.8 (c) comported with the Act's intent, particularly as it was amended in 2001. But, as noted in *Miklosy,* for the court to *sua sponte* determine that the Legislature meant for the UC, as well as the CSU statutes to give the same access to the courts as section 8547.8 (c):

> [W]ould require us to adopt the following implausible line of reasoning: When two parallel statues use nearly identical language, and when the Legislature amends one but not the other, and when the amendment does not merely clarify existing law but actually changes the law, we should nevertheless continue to give the two statutes the same meaning, treating them as if the Legislature actually amended both, and we should do so because the Legislative Counsel's Digest tells us that the bill will so 'specify,' though *the actual text of the bill does not so*

specify. We reject this reasoning, relying instead on the text of the bill, which amends *section 8547.8, subdivision (c),* but not *section 8547.10, subdivision (c). Miklosy*, 44 Cal.4th at 894 (emphasis by the Court).

To put it simply, if the Legislature wanted to allow university employees the same access to the courts as other state employees, it knew how to write statutory language that would do so. The Legislature, however, did no such thing, leaving the two university statutes untouched and thus in keeping with *their* legislative histories can only lead to the conclusion that the internal investigation was meant to be final, and thus only reviewable by way of a writ.

VI. THE STANDARD FOR DETERMINING WHETHER THE CSU SATISFACTORILY ADDRESSED A WHISTLEBLOWER COMPLAINT IS COMBINATION OF THE STANDARD IN C.C.P. § 1085 *PLUS* A DETERMINATION THAT THE CSU FOLLOWED ITS PROCEDURES, AND CONDUCTED THE INVESTIGATION IN A COMPREHENSIVE MANNER AND IN ACCORDANCE WITH DUE PROCESS.

A determination of which writ process is appropriate for challenging the CSU's administrative determination on a whistleblower retaliation complaint is not clear. The appellate court in *Ohton* seems to suggest that the review should be under the

administrative mandamus provisions of C.C.P. section 1094.5. But the court in *Miklosy* clearly stated that administrative determinations by the UC should be evaluated under the ordinary mandamus provisions of C.C.P. section 1085. Because the CSU's process for investigating a retaliation complaint is very similar to the UC's process, it appears that review under § 1085 is most appropriate. But the additional requirement imposed by the CUS statute – that the employee must show that the CSU failed to "satisfactorily address" the complaint – adds an additional degree of scrutiny beyond that required in the UC cases.

Therefore, respecting the differences in the statutory language compels the conclusion that the appropriate standard for judicial review as to whether the CSU's final determination can withstand scrutiny during mandamus review can be characterized as "C.C.P. section 1085-Plus."

As Justice Werdegar notes in her concurrence in *Miklosy*, the standard a court would follow in determining whether to grant a writ petition would be pursuant to C.C.P. § 1085's arbitrary and capricious standard. But the University's satisfying this standard of review does not end the inquiry. Rather, the reviewing court must also determine

whether the CSU satisfactorily addressed the complaint within 18 months.

Determining whether the CSU "satisfactorily addressed" a complaint consists of "fairly evaluating whistleblower retaliation complaints ... and cannot be so perfunctory or arbitrary as to violate the due process guarantee of the state or federal Constitutions." *Miklosy*, 44 Cal.4th at 891. Rather, the University must "comprehensively investigate [the] complaint and arrive at a final decision." *Ohton,* 148 Cal.App.4th at 769.

Therefore, a court reviewing a writ petition faces a two-step process: is the final administrative decision arbitrary and capricious, pursuant to C.C.P. § 1085, *and* was it satisfactorily addressed, using the standard described above? If the court determines that the University did not satisfactorily fulfill these obligations, then "a court might find the state university's decision unsatisfactory (though timely) and on that basis permit a damages action." *Miklosy*, 44 Cal.4th at 886, citing *Ohton*, 148 Cal.App.4th at 765 (parenthetical by the court).

Runyon argues in support of his position that he would have difficulty sustaining his burden of proof during the mandamus process

because of the limited administrative record. Runyon ignores, however, that the reviewing court may order the parties to engage in discovery that is relevant to the writ review process. *Pomona Valley Medical Center v. Superior Court (Bressman)* (1997) 55 Cal.App.4th 93, 101-102.

This standard provides CSU employees an avenue of relief not available to University of California employees. It further appears to address due process concerns raised by Justice Werdegar in her concurring opinion in *Miklosy.* While a University of California employee may challenge the administrative decision by way of a writ, all that can be obtained by way of relief is a court order that the University of California fulfill its duties in investigating the complaint. *See,* e.g., *Forest Lawn Co.*, 244 Cal.App.2d at 346 (mandamus compels an administrative agency to fulfill a legal duty). So long as the decision is issued in a timely manner, there can be no damages action. *Miklosy*, 44 Cal.4th at 898.

But in the case of a California State University employee, a court reviewing a mandamus petition may consider whether the CSU conducted a comprehensive investigation that respected due process. The reviewing court could, accordingly, determine the process so

lacking that the University failed to satisfactorily address the complaint, and allow an action for damages.

This standard reaches a middle ground between the state employee standard pursuant to C.C.P. 8547.8 which allows a civil action regardless of whether the SPB issues a finding, and the University of California statute, which as this Court noted, would bar a civil action provided the decision is timely. *Miklosy,* 44 Cal.4th at 888.

The standard described above with regard to section 8547.12 (c) also puts some teeth into the Act as it relates to the CSU by having the looming specter of facing a civil action should the investigation be conducted in such a perfunctory manner that a court would bypass the mandamus route and instead allow a lawsuit for damages.

A. Public Policy Supports the Standard Proposed by the CSU.

Placing reasonable limitations on lawsuits that can be filed against the CSU serves two important public policies. First, the statutory framework provides a tremendous incentive to the CSU to go to the expense and trouble of establishing an elaborate whistleblower retaliation policy that provides for comprehensive

investigations, reports, rebuttals and final determinations. As a reward for doing so, the CSU is insulated from civil lawsuits except in cases where it ignores it timelines or acts in a superficial or perfunctory manner.

The second public policy consideration is the financial burden to the already cash-strapped CSU system. The Legislature created the means for the University to investigate, in a cost-effective manner, a whistleblower complaint and avoid a civil lawsuit. Only if that process fails does the University face "a damages action in state court, which has the potential to be much more costly to the University [of California]." *Miklosy*, 44 Cal.4th at 888-889.

Therefore, the wording in subparagraph (c) admonishes the University to do the job thoroughly and respect due process, and therefore satisfactorily address the complaint to the satisfaction of the court. But if the University fails to do this, then it could face, in the court's discretion, an action for civil damages.

VII. CONCLUSION

While this is the first case concerning § 8547.12 that has come before this Court, its decisions in *Arbuckle* and *Miklosy* laid the analytical framework for determining the issues in this matter. As

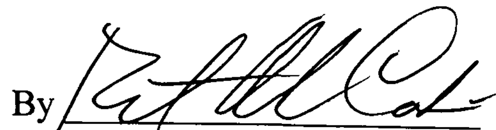
Miklosy and *Ohton* make clear, any challenge to the CSU's final decision must be made by way of a writ of mandate. And, in determining whether to grant writ relief, the court, not the aggrieved employee, shall determine whether the complaint was "satisfactorily addressed."

Because Runyon failed to seek a writ challenging CSU's final determination, he is precluded from proceeding with his civil action for damages. The appellate court's ruling upholding the dismissal of Runyon's lawsuit should be affirmed.

Dated: July 29, 2009.

Respectfully submitted,

Goldman, Magdalin & Krikes

By 

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Dated: July 29, 2009.

Goldman, Magdalin & Krikes

By ______________________

Robert W. Conti
Attorneys for the Board of Trustees of the California State University, incorrectly sued as California State University Long Beach and Luis Ma Calingo

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Filed: IN THE SUPREME COURT OF THE STATE OF CALIFORNIA
(Dispatched by courier for filing on this date.)

STATE OF CALIFORNIA)
) ss:
COUNTY OF LOS ANGELES)

I am a citizen of the United States and a resident of or employed in the City and County of Los Angeles; I am over the age of eighteen years and not a party to the within action; my business address is: 900 Wilshire Blvd., Suite 1530, Los Angeles, California 90017. On this date, I served the persons interested in said action by placing one copy of the above-entitled document in sealed envelopes with first-class postage fully prepaid in the United States post office mailbox at Los Angeles, California, addressed as follows:

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I certify (or declare) under penalty of perjury that the foregoing is true and correct. Executed on July 29, 2009, at Los Angeles, California.

E. Gonzales