# ATTACHMENT C

# RESPONDENT'S ARGUMENT

ATTACHMENT C

**JESS A. SALCEDO**
*Respondent, In Propria Persona*

Date: September 30,2026

Board Services Unit Coordinator
California Public Employees' Retirement System
P.O. Box 942701
Sacramento, CA 94229-2701

**Re:** Jess A. Salcedo — Industrial Disability Retirement

**Agency Case No.:** 2024-0348

**OAH No.:** 2026020557

**Board Consideration:** November 18, 2026

Dear Board Services Unit Coordinator:

I respectfully submit the enclosed Respondent's Written Argument in Opposition to Adoption of the Proposed Decision for inclusion in the materials provided to the Board of Administration in connection with its consideration of my industrial disability retirement matter.

The enclosed argument addresses the September 17, 2026 Proposed Decision and requests that the Board decline to adopt it as written and remand the matter for further consideration of the orthopedic incapacity and continuity issues. The argument also identifies my two prior 2014 industrial disability retirement applications and their respective June 30, 2014 and March 25, 2015 cancellations, neither of which was stated to be a denial on the medical merits.

I respectfully request that this cover letter and the enclosed written argument be included in the agenda materials provided to the Board and the parties for consideration of this matter.

Thank you for your consideration.

Respectfully submitted,

Jess A. Salcedo
Respondent, In Propria Persona

**Enclosure:** Respondent's Written Argument in Opposition to Adoption of the Proposed Decision

**JESS A. SALCEDO**
Respondent, In Propria Persona

October 14, 2026

Board Secretary
California Public Employees' Retirement System
P.O. Box 942701
Sacramento, CA 94229-2701

**RE: DUPLICATE SUBMISSION — WRITTEN ARGUMENT IN OPPOSITION TO ADOPTION OF PROPOSED DECISION**

Respondent: Jess A. Salcedo
CalPERS Agency Case No.: 2024-0348
Office of Administrative Hearings Case No.: 2026020557
Board Consideration Date: November 18, 2026

Dear Board Secretary:

Enclosed please find a duplicate copy of my written argument in opposition to adoption of the Proposed Decision dated September 17, 2026, concerning my application for Industrial Disability Retirement.

**Duplicate Submission Notice:** My original written argument and accompanying cover letter were mailed by United States Postal Service Certified Mail with Electronic Return Receipt on September 30, 2026, under Tracking Number 9507 1066 9171 6273 3383 32. As of the date of this letter, I have not received the electronic return receipt confirming delivery. Accordingly, I am submitting this duplicate copy as a precaution to ensure that my written argument is received and included in the materials for the Board's November 18, 2026 consideration.

This submission is not intended to amend, replace, or supplement the substance of my previously submitted written argument. I respectfully request that it be associated with my existing appeal and that duplicate copies not be treated as separate arguments.

As stated in my enclosed written argument, I respectfully request that the Board decline to adopt the Proposed Decision and remand the matter for further proceedings and consideration of the relevant medical evidence, actual duties of a Correctional Lieutenant, and my prior Industrial Disability Retirement application history.

I respectfully request confirmation that my written argument has been received and included in the materials provided to the Board.

Thank you for your time and consideration.

Respectfully submitted,

Jess A. Salcedo
Respondent, In Propria Persona

Enclosure: Duplicate Copy — Respondent's Written Argument in Opposition to Adoption of the Proposed Decision

**JESS A. SALCEDO**
*Respondent, In Propria Persona*

**BEFORE THE BOARD OF ADMINISTRATION**
**CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM**
**STATE OF CALIFORNIA**

In the Matter of the Application for Industrial Disability Retirement of
**JESS A. SALCEDO**
Agency Case No. 2024-0348 | OAH No. 2026020557

# RESPONDENT'S WRITTEN ARGUMENT IN OPPOSITION TO ADOPTION OF THE PROPOSED DECISION

Respondent Jess A. Salcedo respectfully submits this written argument in opposition to adoption of the September 17, 2026 Proposed Decision. Respondent requests that the Board decline to adopt the Proposed Decision as written and remand the matter for further consideration of the orthopedic incapacity and continuity issues. The record warrants a more explicit comparison between the orthopedic limitations documented by the independent medical evaluator and the actual, admitted emergency and physical duties of a Correctional Lieutenant. The Proposed Decision also does not address Respondent's two prior 2014 industrial disability retirement applications, both of which were canceled rather than denied on the medical merits, or the contemporaneous evidence submitted to CalPERS concerning disability and continuity. Respondent further requests clarification that the Post-Traumatic Stress Disorder and hearing-loss portions canceled for insufficient evidence were not adjudicated on their medical merits.

## I. THE PROPOSED DECISION ESTABLISHES THE 2011 INJURY AND THE PHYSICAL NATURE OF RESPONDENT'S ACTUAL CORRECTIONAL LIEUTENANT DUTIES.

The Proposed Decision finds that, during February 2011 live alarm-response training, Respondent's right arm and shoulder were hyperextended while he was being handcuffed; that he immediately experienced excruciating pain; that he continued working while self-treating; and that the continuing pain caused increasing concern regarding his ability to respond to emergency alarms, defend himself and others, and physically overcome and restrain unruly inmates. (Proposed Decision (PD), Findings 3-6.) Those findings concern events and functional limitations arising before Respondent's December 29, 2011 retirement.

The Proposed Decision further recognizes that Respondent's position was not solely administrative. Respondent regularly responded to emergency alarms, assumed command, directed correctional officers, and, when circumstances required, physically intervened and assisted in restraining inmates. (PD, Finding 49.) It also records Respondent's distinction between controlled part-time work and correctional emergencies: at Home Depot he can stop, rest, change position, or request assistance, whereas during a prison emergency he cannot control the timing, duration, resistance encountered, or physical demands. (PD, Finding 51.)

The applicable standard concerns substantial inability to perform the applicant's usual duties, not total inability to perform every activity. (Mansperger v. Public Employees' Retirement System (1970) 6 Cal.App.3d 873, 876-877.) Hosford v. Board of Administration (1978) 77 Cal.App.3d 854 recognizes that the actual demands of the position are relevant in determining usual duties. Here, the Proposed Decision itself identifies emergency physical intervention and restraint as part of Respondent's actual duties.

## II. DR. MOLDAVSKIY'S OWN ORTHOPEDIC FINDINGS WARRANT A MORE EXPLICIT FUNCTIONAL COMPARISON WITH THE ESSENTIAL DUTIES OF THE POSITION.

Dr. Pavel Moldavskiy's examination did not yield entirely normal orthopedic findings. The Proposed Decision records widespread bilateral shoulder tenderness, reduced range of motion, and abnormal grip-strength testing demonstrating weakness in multiple muscle groups. (PD, Findings 35-38.) It further records his diagnosis of bilateral shoulder impingement syndrome with arthritis, his characterization of the reduced range of motion as a mild-to-moderate impairment, and his testimony that reduced range of motion would make certain job duties more difficult. His report also stated that some tasks would be difficult to perform. (PD, Findings 37, 39-40.)

Respondent does not contend that pain or difficulty, standing alone, necessarily establishes substantial incapacity. Rather, Respondent submits that the record requires a functional comparison between the documented orthopedic limitations and the duties the Proposed Decision found Respondent actually performed: immediate emergency response, physical intervention, restraint and control of inmates, protection of staff and inmates, and command responsibility during unpredictable incidents.

Dr. Moldavskiy reviewed the physical requirements and essential functions before conducting his independent medical evaluation. (PD, Finding 34.) That fact makes the functional analysis particularly important. The issue is how reduced motion, pain, and abnormal grip findings were reconciled with duties requiring reliable physical control and immediate emergency intervention. Respondent respectfully requests reconsideration with an express comparison between the documented orthopedic findings and the actual essential duties of the position.

## III. THE TREATING-PHYSICIAN EVIDENCE SHOULD BE CONSIDERED TOGETHER WITH THE REMAINDER OF THE RECORD.

The Proposed Decision recognizes that Dr. Peter Simonian concluded Respondent was substantially incapacitated from the usual duties of a Correctional Lieutenant as of December 29, 2011 for a period exceeding 12 months, and that Dr. Marshall Lewis concluded Respondent was substantially incapacitated from the usual duties as of November 6, 2013 and considered the incapacity permanent. (PD, Findings 41-47.)

The Proposed Decision afforded those opinions less weight because neither physician testified, their reports were received as administrative hearsay, and the reports did not identify the specific job duties Respondent could not perform. (PD, Findings 52-55.) Respondent acknowledges the evidentiary limitations applicable to administrative hearsay. Nevertheless, those opinions did not stand alone. The record also contained Respondent's sworn firsthand testimony, admitted physical-requirement and job-duty evidence, the 2011 injury history, subsequent treatment and surgeries, and Dr. Moldavskiy's own abnormal orthopedic findings. Respondent respectfully requests that the treating-physician opinions be considered as supplemental evidence within that complete evidentiary record.

**IV. THE PROPOSED DECISION DOES NOT ADDRESS RESPONDENT'S TWO PRIOR 2014 IDR APPLICATIONS OR THE CONTEMPORANEOUS CONTINUITY EVIDENCE.**

The August 7, 2023 application was not Respondent's first effort to obtain industrial disability retirement. CalPERS-stamped records establish that Respondent submitted an Industrial Disability Retirement Election Application at the Fresno Regional Office on April 30, 2014. That application identified heart and right-shoulder conditions, including right-shoulder pain, limited range of motion, loss of strength, traveling pain, and numbness extending into the upper extremity and fingers. It identified December 29, 2011 as the disability date and stated that, because of Respondent's physical condition and physician restrictions, he was no longer able to perform the usual and customary duties of a Correctional Lieutenant.

On May 15, 2014, CalPERS advised Respondent that it had received his disability-retirement application but required additional information, including medical documentation substantiating that the disability had continued uninterrupted from December 2011 forward. Respondent did not abandon the application. His written response, dated June 2, 2014 and stamped received by the Fresno Regional Office on June 12, 2014, described continuing right-shoulder pain, stiffness, loss of motion, numbness, and weakness; identified medical opinions addressing inability to perform his job duties; and listed supporting medical, workers' compensation, and 2011 injury documentation.

CalPERS canceled the first application on June 30, 2014 and expressly advised that any future request would require a new application. Respondent thereafter submitted another CalPERS-stamped Industrial Disability Retirement Election Application on September 26, 2014. The second application again identified heart and right-shoulder conditions, a December 29, 2011 disability date, pain, limited range of motion, loss of strength and numbness, and inability to perform the usual and customary duties of a Correctional Lieutenant.

CalPERS subsequently canceled the second application by letter dated March 25, 2015. That notice again stated that CalPERS was canceling the industrial disability retirement application and that any future request would require a new application. The March 25, 2015 notice did not state that Respondent was medically determined not to be substantially incapacitated and did not characterize the disposition as a denial on the medical merits.

Respondent does not contend that the existence of these earlier applications, standing alone, establishes continuous medical incapacity. Their significance is that they document Respondent's pursuit of industrial disability retirement and substantially the same right-shoulder functional complaints in 2014, years before the August 2023 application. They also identify contemporaneous medical and functional evidence substantially closer in time to the claimed onset and retirement date. The Proposed Decision's discussion of the application history does not address these two earlier applications or their cancellations.

Government Code section 21154 makes continuity relevant to a late application. Respondent therefore respectfully requests consideration of the complete chronology: the February 2011 injury; December 2011 retirement; 2013-2014 medical and workers' compensation evidence; the April 2014 application and June 2014 response; the June 2014 cancellation; the September 2014 application; the March 25, 2015 cancellation; subsequent treatment and surgeries; and the August 2023 application. To the extent the existing hearing record does not permit consideration of the earlier application materials or a complete continuity determination, Respondent respectfully requests remand so that the relevant administrative history and continuity evidence may be considered through the appropriate procedure.

**V. THE CARDIOLOGY DETERMINATION SHOULD REMAIN DISTINCT FROM THE ORTHOPEDIC FUNCTIONAL QUESTION.**

Dr. James Schmitz evaluated Respondent's cardiological condition and opined that Respondent's hypertension did not substantially incapacitate him from the usual duties of a Correctional Lieutenant. (PD, Findings 23-30.) Respondent acknowledges that the Proposed Decision found this opinion persuasive. That cardiology conclusion, however, does not resolve the separate orthopedic question whether Respondent's shoulder impairment, reduced motion, pain, and abnormal grip findings substantially affected the essential physical and emergency functions of the position.

**VI. POST-TRAUMATIC STRESS DISORDER AND HEARING LOSS WERE CANCELED FOR INSUFFICIENT EVIDENCE AND WERE NOT ADJUDICATED ON THEIR MEDICAL MERITS.**

Finding 14 states that CalPERS determined there was insufficient medical evidence either to refer Respondent's Post-Traumatic Stress Disorder and hearing-loss conditions for independent medical examinations or to determine eligibility based upon those conditions, and that CalPERS canceled the application as to both. The Proposed Decision's substantive analysis and ultimate conclusion concern the cardiological and orthopedic conditions. Respondent therefore respectfully requests that any Board action make clear that the present proceeding does not convert the canceled Post-Traumatic Stress Disorder and hearing-loss portions into determinations on the medical merits that those conditions are non-disabling.

## VII. REQUEST FOR BOARD ACTION

For the foregoing reasons, Respondent respectfully requests that the Board decline to adopt the Proposed Decision as written and remand the matter for reconsideration of the orthopedic incapacity and continuity issues. Respondent requests: (1) an express functional comparison between the documented orthopedic findings and the actual usual and essential duties of a Correctional Lieutenant; (2) consideration, through the appropriate procedure, of the two prior 2014 IDR applications, their 2014 and 2015 cancellations, and the contemporaneous continuity evidence; and (3) an express analysis of continuity under Government Code section 21154. Respondent further requests clarification that the Post-Traumatic Stress Disorder and hearing-loss portions remain canceled for insufficient evidence and were not adjudicated on their medical merits.

*Respectfully submitted,*
Jess A. Salcedo
Respondent, In Propria Persona
Date: September 30, 2026