ATTACHMENT C

RESPONDENT'S ARGUMENT

BEFORE THE CALPERS BOARD OF ADMINISTRATION
In re Michael F. Britt | Agency No. 2025-1397 | OAH No. 2026020976
RESPONDENT'S ARGUMENT

Respondent earned 100% health vesting through state service before his 1999 disability retirement. CalPERS ended his comprehensive overseas Basic benefits effective January 1, 2025 without advance notice or an opportunity to contest the change before it took effect. The Proposed Decision recommends denying his appeal of CalPERS's June 18, 2025 determination without separately analyzing the legal consequences of the acknowledged lack of notice or the due-process, fiduciary-duty, and estoppel arguments presented in admitted Exhibit J, or resolving his separate February 22, 2025 coverage-review request. CalPERS stopped applying the Basic PPO Evidence of Coverage—the contract under which Anthem had administered his benefits—and applied the CalPERS PERS Platinum Supplement to Original Medicare plan contract ("Supplement Plan contract"). CalPERS's Statement of Issues identifies the EOC as the contract governing payable benefits. (CalPERS Ex. 1, A4, ¶ VIII.) Respondent had requested Basic enrollment and received Anthem's Basic PPO materials and coverage confirmations. He believed he was enrolled in Basic and did not know CalPERS had changed the contract used to administer his benefits. CalPERS calls the earlier arrangement a "holding plan": Basic benefits were provided while its records showed the Supplement Plan. The ALJ found that CalPERS "should have enrolled" Respondent in Basic, that he "was not to blame," and that CalPERS never told him of a holding plan, yet approved ending Basic benefits. (PD, Finding 27, pp. 13–14; Legal Conclusion 5, pp. 17–18.)

CalPERS directed Anthem to provide Basic coverage; Anthem provided it, and CalPERS continued accepting employer contributions after Respondent reported the discrepancy. Respondent reported the mismatch between Anthem's Basic coverage and CalPERS's Supplement Plan records in June 2019, called with an Anthem representative in August 2022, and sought correction again in 2023. Lisa Consiglio's August 17, 2022 entry records Anthem confirming Basic while CalPERS showed the Supplement Plan and requests a callback to resolve and correct the discrepancy. (CalPERS Ex. 34, A348–A349, A351, A353–A354, A358.) Respondent recalls a callback reassuring him not to worry and that everything would be all right; he stopped further pursuit in reliance. Assistant Chief Melissa Rucker's June 11, 2025 email confirmed that direction and stated, "No mistakes or fraud were committed by anyone involved." (CalPERS Exs. 32–33, A264–A265; PD, Findings 3, 14.) The Board should explain the authority and process for ending those benefits rather than completing the requested enrollment. Respondent's post-hearing Basic PPO election effective January 1, 2027 is separate from his requests for historical enrollment completion, record reconciliation, decisions on preserved objections, and operative nonrecovery of disputed 2019–2024 amounts. He disputes CalPERS's mistake characterization and its characterization of the January 2025 transactions as an informed new paid election. He admits no historical debt and seeks no exemption from lawful prospective contributions.

Respondent's June 21, 2025 appeal challenged CalPERS's June 18, 2025 enrollment determination concerning "Health Plan Reclassification and Termination." It raised lack of notice and due process, administrative estoppel, good-faith reliance, and "Breach of Fiduciary Duty" in administering benefits. (Resp. Ex. J, B141–B144, B152–B153, B155–B156.) His admitted materials in Exhibit J asserted financial harm from reliance, requested protection against penalties for following CalPERS's guidance, and argued that CalPERS accepted premiums and provided services for six years. (Id., B152–B153, B339–B340.) The decision acknowledges no fault and hardship but does not analyze whether that conduct and reliance support estoppel against retrospective liability. (PD, Findings 27–28, Legal Conclusions 5–7; Lentz v. McMahon (1989) 49 Cal.3d 393, 399–402; City of Long Beach v. Mansell (1970) 3 Cal.3d 462, 496–497.) He requests relief within the Board's authority and preserves his constitutional objections for judicial review. (Resp. Ex. J, B335, B340.)

I. CALPERS DID NOT COMPLETE THE 2019 BASIC REQUEST

Beginning in June 2018, Respondent repeatedly contacted CalPERS to arrange coverage for his permanent move to Switzerland. (CalPERS Ex. 34, A368–A369.) On September 19, 2018, CalPERS

recorded that it had “confirmed member can remain in basic PPO coverage while permanently residing outside of US,” instructed him “to update address with us,” and stated, “we will place him on PPO.” (Id., A367.) On November 7, 2018, it recorded that Medicare “doesn’t work out of country” and Respondent “would be change to the basic plan.” On January 24, 2019, CalPERS entered his Swiss address and recorded his report that SSA and Medicare would not cover him abroad and that “he needs to be enrolled in a basic plan.” On January 29, 2019, it confirmed the address update and forwarded the enrollment inquiry for review. (CalPERS Ex. 9, A97–A98; Ex. 34, A361–A362.) Respondent requested Basic enrollment and completed the instructed steps. Finding 14 places the asserted holding-plan action afterward: the request came first.

The admitted Medicare Enrollment Guide, current as of August 2019, identified CalPERS as retirees’ health benefits officer and authorized changes through myCalPERS, mailed or faxed forms, or telephone. (CalPERS Ex. 5, A59, A69.) It permitted permanent foreign residents to enroll in a PPO Basic plan and request changes within 60 days of a residential-address or service-area change. (Id., A72.) The decision identifies no additional member step communicated when CalPERS forwarded the January 2019 inquiry. Finding 12 likewise quotes the pre-2025 Supplement Plan Evidence of Coverage: a member permanently abroad was “no longer eligible” for the Supplement Plan and “must change enrollment to a Basic Plan.” (PD, Finding 12, p. 6.)

II. CALPERS SHOULD COMPLETE THE 2019 BASIC ENROLLMENT REQUEST AND RECONCILE ITS RECORDS

CalPERS administers PEMHCA under Government Code section 22794; its duties toward covered annuitants are also informed by Government Code section 20151 and California Constitution, article XVI, section 17(a)–(b). (Cal. Atty. Gen., Opn. No. 06-107, pp. 4–5.) For an annuitant, its Health Benefits Division was the “employing office.” Section 599.500 distinguishes an enrollment election from the Division’s later completion or approval of the enrollment change as an administrative action. (2 Cal. Code Regs., § 599.500, subds. (b), (f), (j).)

The 2019 version of section 599.502 authorized an annuitant enrolled in a supplemental plan who moved, other than temporarily, outside the United States to change to a plan providing coverage abroad. Former subdivision (i) placed the remaining processing duties on the employing office: providing necessary plan information, assisting with required enrollment documentation, and forwarding properly completed forms to the Board's Health Benefits Division. (2 Cal. Code Regs., former § 599.502(f)(6)(E), (f)(13), (i) (2019); now § 599.502(e)(6)(E), (e)(13), (h).)

Respondent presented the enrollment-processing duty argument to the ALJ. (Resp. Written Closing Argument, pp. 4–5, 9.) Yet the Proposed Decision applies neither section 599.500 nor former section 599.502(i), identifies no missing member step communicated to Respondent, and does not determine whether CalPERS fulfilled those duties.

The processing claim rests on PEMHCA and its enrollment regulations, not an assumed extension of PERL. Respondent addresses section 20160 because the Proposed Decision invokes it and assigns CalPERS the preponderance burden of proving that its asserted January 2025 correction and subsequent denial were appropriate. (PD, Legal Conclusions 1, 4–6, pp. 14–19.) If retained, the Board should explain its applicability to PEMHCA; otherwise, it should apply the governing PEMHCA provisions. Contemporaneous requests, address and carrier records, mismatch entries, and CalPERS’s confirmations independently support processing relief.

The decision says CalPERS “should have enrolled” Respondent, yet approves ending Basic benefits while leaving him in the Supplement Plan. (PD, Findings 24–25, p. 13; Legal Conclusion 5, pp. 17–18.) That designation affected benefits and contributions. Neither the January 2025 termination of Basic benefits nor the 2027 election resolves the 2019 request. If section 20160 governs as the ALJ assumed, the Board should explain how “no practical purpose” satisfies subdivision (e)’s adjustment requirements. Correction and nonrecovery require separate legal grounds.

III. THE FEBRUARY 2025 COVERAGE-REVIEW REQUEST WAS NOT ADJUDICATED

Government Code section 22848 gives an annuitant dissatisfied with an action or failure to act concerning coverage a right of appeal to the Board and an opportunity for a fair hearing. Section 599.518 defines "coverage" as a benefit described in an Evidence of Coverage and "grievance" to include a complaint, dispute, request for reconsideration, or appeal. It is not limited to treatment or claim-payment disputes: subdivision (f) applies to a supplemental-plan benefit not covered by Medicare, and subdivision (g) makes the exhaustion requirements in subdivisions (b) and (c) inapplicable when the dispute concerns eligibility for coverage. (Cal. Code Regs., tit. 2, § 599.518, subds. (a), (d), (f)–(g).)

Anthem and Health Appeals confirmed overseas coverage for the Swiss exemption review in 2024; Anthem undertook documentation assistance. (Resp. Ex. D, B63–B65, B68, B73–B75; Ex. J, B210–B211, B304–B305.) Respondent's January 6, 2025 request continued that review, seeking confirmation of existing coverage, not new enrollment. On January 17, 2025, Health Appeals said Supplement Plan benefits "has changed," asserted no overseas coverage, and quoted "must change enrollment to a Basic Plan" as 2025 EOC language. Amendment 1 deleted that language effective January 1, 2025 and expressly provided emergency, urgent, and related follow-up benefits abroad, contradicting the blanket denial. (Resp. Ex. F, B95–B96; CalPERS Ex. 27, A189, A192–A194.) Blue Shield's January 23, 2025 letter confirmed emergency, urgent, routine, and elective foreign coverage. On February 15, 2025, Health Appeals called it inaccurate and announced an amended letter. Finding 19 omits the confirmation and its rejection. The February 15 email required Medicare election for nonworking Medicare-eligible members and Basic enrollment abroad without reconciling the amendment. (Resp. Ex. C, B54–B55; Ex. F, B97–B100; PD, Findings 12, 19.)

Respondent's February 22, 2025 "Request for Administrative Review of Coverage Decision" challenged the contradictory 2025 coverage determinations. He asked which emergency, urgent, routine, and elective medical services were covered in Switzerland, sought reconsideration and the governing legal and policy basis, and requested information about appeal rights. (Resp. Ex. F, B105–B107.) Legal Conclusion 6, footnote 4 addresses 2019–2024 prescription denials. Its prescription-exhaustion discussion does not identify or resolve the February 22 coverage-review request or determine whether it qualified for review under section 599.518.

On May 12, 2025, Health Appeals stated, "Your concern does not qualify for an Administrative Review," while again determining that Respondent "must enroll in a basic plan," without section 599.518 analysis or a section 22848 appeal route. (Resp. Ex. H, B122.) After referral to Enrollment, Respondent filed his May 23, 2025 "Request for Resolution and Administrative Review of Longstanding Enrollment Error." (Id., B123–B124.) Respondent's Exhibit B contains the complete transmitting email, timeline, Touch Point records, and carrier records; CalPERS Exhibit 4 contains only the May 23 letter and July 8, 2019 Letter 226. (CalPERS Ex. 4, A52–A56; Resp. Ex. B, B4–B43.) Finding 20 quotes requests to investigate, correct, and restore coverage; it identifies no express request to waive lawful contributions. CalPERS's June 18, 2025 determination responded to the May 23 request; Respondent's June 21, 2025 appeal challenged reclassification and termination. (CalPERS Ex. 3, A50–A51; Resp. Ex. J, B141–B143; PD, Findings 20–22, pp. 10–12.) Neither the June 18 determination nor the resulting OAH enrollment proceeding adjudicated the separate February 22, 2025 coverage-review request.

Neither issue framed in the Statement of Issues identified the February 22, 2025 coverage-review request or the May 12 denial, although the Statement of Issues cited section 22848. Respondent's scope and dismissal-or-clarification motions challenged the omission, sought amendment or clarification, and invoked section 22848 and section 599.518, as did his closing. (Motion to Clarify Scope (July 20, 2026), pp. 18–24, 27–28; Resp. Written Closing Argument, pp. 5–6, 13–14.) The scope motion's disclaimer against a merits ruling limited that motion; it did not withdraw the underlying request. The July 29, 2026 order allowed evidence but neither amended the issues nor adjudicated the omitted controversy. The decision contains no finding, conclusion, or disposition resolving it. Referral to Enrollment did not withdraw the coverage objection. Respondent's hearing brief asked who authorized the change, under what authority, and with what notice and hearing opportunity; it identified counsel's representation that

due-process and fiduciary-duty objections would be considered administratively. (Resp. Hearing Trial Brief, pp. 5, 7–9.)

IV. CALPERS DID NOT PROVE THE ASSERTED 2019 PLACEMENT

CalPERS bears the preponderance burden under Legal Conclusion 4. Findings 4–9 describe a general 2013–2014 EGWP mechanism; that history alone does not establish Respondent's placement after his 2018–2019 Basic request. Finding 14 asserts a placement after the January 24, 2019 address update but identifies no contemporaneous member-specific transaction, dated carrier directive, written terms, duration, exit condition, notice, or removal record; Finding 15 confirms no notice through December 2024. Section 11425.50 and Topanga require an explanation connecting the evidence, findings, and result. Testimony and circumstantial evidence may support findings, but the decision should reconcile Respondent's contrary records. (July 29, 2026 Order, pp. 2–3; Gov. Code, § 11425.50, subds. (a)–(c); Topanga Assn. for a Scenic Community v. County of Los Angeles (1974) 11 Cal.3d 506, 514–515.)

Anthem's March 15, 2019 letter reflected Basic effective February 1, 2019. Its June 12, 2025 response identified Basic/Foreign through January 1, 2025, based on CalPERS's electronic enrollment information and dates "validated on MyCalPERS." Its June 20, 2025 grievance response assigned eligibility dates and plan choices to CalPERS. (Resp. Ex. C, B48–B49, B56–B57; Ex. AD, B728–B729.) Health Appeals' February 15, 2025 email attributed the prior benefits to "Anthem error"; Rucker's June 11, 2025 email confirmed CalPERS directed Basic administration, Anthem's information was accurate, and no mistake or fraud occurred. (Resp. Ex. F, B99; CalPERS Exs. 32–33, A264–A265.) The decision does not reconcile those explanations or identify an individual holding-placement directive. Respondent's scope motion also records his recollection of Rucker's assurance that CalPERS would not seek repayment if Anthem did not. (Motion to Clarify Scope (July 20, 2026), pp. 23–24.)

Dual status does not prove its cause; it is consistent with carrier-level action on the request and unfinished internal processing. An April 25, 2023 internal inquiry stated that Respondent "needs to be on Basic retroactive" and requested review and correction. A later 2023 entry said the request "does not appear to have been processed." (CalPERS Ex. 34, A351, A348–A349.) The decision does not reconcile either agency assessment with the June 18, 2025 determination that historical updating was unnecessary. (CalPERS Ex. 3, A50.) Finding 15's July 2019 and August 2023 letters saying no change was required also conflict with Finding 12's EOC instruction that a permanent foreign resident "must change" to Basic.

The July 22, 2026 order found CalPERS's discovery response incomplete. CalPERS later withheld PERS0928 –PERS0958, including holding-plan memoranda and process flows, under asserted official-information and deliberative-process protection. At the August 7, 2026 prehearing conference, counsel offered them for in-camera review and stated that she could not represent that attorney-client privilege applied; the ALJ declined review. (July 22, 2026 Order, p. 3; CalPERS Aug. 6, 2026 Opposition, PDF pp. 20, 25–26; Aug. 7, 2026 PHC recording.) Because those materials were never admitted, they cannot supply Finding 14's missing basis; nonproduction and the absence of private review limited testing of CalPERS's explanation. Finding 14 should rest on record evidence and properly noticed matters. Even accepting a holding arrangement would not determine whether CalPERS completed the earlier request or resolved the notice and coverage-review objections.

V. JANUARY 2025 DID NOT RESOLVE THE EARLIER ENROLLMENT REQUEST

The January 22–23, 2025 calls were agency callbacks about the existing coverage dispute. The January 22 note begins, "Gave a call to member regarding inquiry received," records Respondent's position that he had Basic coverage since 2019, and states that he requested escalation. CalPERS employee Michael De Vore's January 23 note begins, "Called member per escalation." (CalPERS Ex. 34, A326, A328–A329.) That January 2025 offer did not resolve the 2019 request.

CalPERS's January 22, 2025 Touch Point entry records an incomplete explanation of the prior administrator's Supplement Plan arrangement, premium objections, and escalation. (CalPERS Ex. 34, A329.) Respondent's February 4, 2025 message describes a female caller, an approximately $700 premium, refusal, and escalation to "a Michael." (Resp. Ex. J, B317.) De Vore's January 23, 2025 note says "never enrolled," yet records Respondent's 2019 request and reading Rachel Regan's June 21, 2019

entry. That entry states he “has "basic" coverage due to OOC”; De Vore’s own summary acknowledges Basic coverage “due to a foreign address.” (CalPERS Ex. 34, A326, A358.) His note attributes assent before the premium dispute, then says, “I disconnected call” and “Processed member request.” Agency notes record the immediate callback and requested reversal. (Id., A326–A327.) Respondent’s January 25, 2025 message denied requesting removal from PPO; his January 28, 2025 email acknowledged “initial agreement” but explained the immediate callback, objection, and lack of informed consent. (Resp. Ex. J, B314; Ex. F, B97–B98.) Finding 19 does not reconcile apparent assent to restore existing coverage with authorization of a new paid election.

The Vonage log shows an incoming call on January 22, 2025 and, on January 23, 2025, an incoming call at 11:54 a.m. followed by Respondent’s 12:18 p.m. return call. (Resp. Ex. AB, B658–B659.) CalPERS requested a callback before noon Pacific time. (CalPERS Ex. 34, A330.) Transactions were created at 9:20:27 and 9:20:28 a.m.—before the 11:54 a.m. call if both systems used Pacific time—and one was coded “Moving out of U.S.,” although Respondent moved in December 2018. Synchronization and finalization at creation were not established. On February 3, 2025, CalPERS marked both transactions “Rescinded,” recording “Administrative Correction,” “Management approval,” and “Admin: Reenroll Medicare” effective January 1, 2025. Finding 19 does not reconcile that sequence. (Resp. Ex. G, B112–B115.)

Neither January 2025 call note identifies a holding-plan explanation. Findings 15, 18, and 27 recognize the absence of holding-plan and benefit-change notice. An entry attributed to Rucker, bearing a May 27, 2025 capture date, asserts she explained a holding plan; Respondent disputes that account. His May 28, 2025 account records “a lot of confusion,” cost concerns, unanswered questions, and her promised Swiss-documentation letter. (CalPERS Ex. 34, A271–A272.) Blue Shield’s June 5, 2025 email discussed that promised letter. Rucker’s June 2, 2025 letter and June 11 email confirmed historical Basic benefits without identifying an individual holding-placement act. (Resp. Ex. Z, B625; CalPERS Exs. 32–33, A264–A265.) The decision does not reconcile these accounts.

Respondent recalls Rucker testifying that “all call center calls are recorded.” He requested them on January 25, May 14, and May 23, 2025. (Resp. Ex. J, B314, B266; CalPERS Ex. 34, A281, A286.) On May 14, 2025, Records Management stated, “WE DO NOT HAVE ANY AUDIO OR OTHER DOCUMENTS THAT WE HAVE NOT SENT TO MEMBER.” On June 2, 2025, another unit reported locating approximately 22 recorded calls and referred the request to Privacy. (CalPERS Ex. 34, A287, A270.) The admitted record contains no inventory identifying the disputed calls, no recording or transcript identified as either disputed January call, and no final disposition of the recording requests; neither disputed January caller testified. Nonproduction does not prove the recordings’ contents but limited testing of agency summaries while CalPERS bore the burden under Legal Conclusion 4. These unreconciled production assurances bear on the weight of the agency summaries.

CalPERS—not Respondent—introduced the “at no cost” characterization and conditional calculations of $36,034.54 in contributions and $8,269.12 in Medicare reimbursements. These are not adjudicated debt. Legal Conclusions 5–6 recognize no member fault and accept no historical recovery for 2019–2024, but the order does not expressly address that protection’s effect on enrollment completion or reconciliation. “Windfall” cannot substitute for analysis. (CalPERS Ex. 3, A50–A51; PD, Finding 21, pp. 10–12; Legal Conclusions 5–6 and Order, pp. 17–20.)

VI. REQUESTED BOARD ACTION

Respondent asks the Board to reject the Proposed Decision, grant the appeal in part, and decide under Government Code section 11517(c)(2)(E) on the existing record, including the transcript unless stipulated otherwise. Subparagraph (E)(iii) permits decision of fewer than all issues. He requests that the Board:

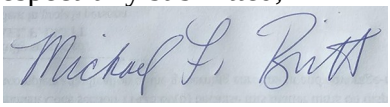
1. Find that Respondent’s documented telephone request and address update in 2018–2019 triggered CalPERS’s duties under sections 599.500 and former 599.502(i), and that CalPERS failed to complete the requested processing or reconcile its internal Supplement Plan designation with the Basic eligibility supplied to Anthem.

2. Expressly adopt and preserve the supported determinations that CalPERS directed Anthem's Basic benefits while retaining the Supplement Plan internally; provided confusing and conflicting guidance; gave no holding-plan or benefit-change notice; and that Respondent reasonably relied, was entitled to 100% of the applicable employer contribution, and was not at fault. Correct the unsupported individual holding-placement and appropriate-correction findings and the "free coverage" and "windfall" characterizations. Do not adopt Finding 19 as establishing an informed January 2025 election without reconciling Respondent's contemporaneous objections to that purported election and the agency records. Explain material conflicts between CalPERS's records, its explanations, and Respondent's account.
3. Without accepting CalPERS's mistake characterization or conceding lawful termination, determine under PEMHCA and its enrollment regulations the historical status and effective date required by proper processing of the 2019 request; order lawful completion and record reconciliation. Explain any reliance on section 20160 and apply it consistently; otherwise apply PEMHCA. Enter in the Order a final determination barring recovery of disputed 2019–2024 premium differentials and Medicare Part B reimbursements, including amounts from ordered completion or reconciliation, through direct collection, pension deductions, offsets, or setoffs. State separate factual and legal grounds for correction and nonrecovery, including whether equitable estoppel independently supports nonrecovery; section 20160(e) is not asserted as an independent premium-waiver power. For unresolved nonrecovery, identify undecided issues and the review route; conditional figures are not adjudicated debt. Any accounting should include all parties' lawful contributions, reimbursements, payments, adjustments, and credits, including relevant pre-2019 amounts and contribution rights under the Bargaining Unit 1 MOU applicable at Respondent's 1999 retirement. By requesting this relief and electing Basic PPO enrollment effective January 1, 2027, Respondent concedes no historical liability or lawful termination and waives no preserved objections or defenses. Respondent seeks no exemption from lawful prospective contributions.
4. Resolve the statutory, regulatory, notice, reliance, and agency-duty objections within the Board's authority, with findings explaining the challenged actions and denial. Determine whether the May 12, 2025 denial of the February 22 coverage-review request afforded the review and fair-hearing rights required by Government Code section 22848 and section 599.518, and whether this proceeding satisfied Government Code sections 11425.10(a)(1), (6) and 11425.50. Explain what notice and review were afforded and how the later enrollment proceeding addressed the omitted coverage dispute. Respondent challenges the administration of his benefits, not the constitutionality of a statute, and requests no declaration invalidating a statute or refusal to enforce one contrary to California Constitution, article III, section 3.5. His objections under article I, section 7 and the Fourteenth Amendment remain preserved for judicial review. For issues outside this appeal or the Board's authority, identify the limitation and review route without treating them as adjudicated or withdrawn.
5. Decline precedential designation of the Proposed Decision, or any part of any resulting decision, under Government Code section 11425.60(b) because this matter turns on disputed member-specific events and incomplete adjudication of the governing enrollment and coverage-review provisions.

Respondent respectfully requests consideration of the cited record as a whole, documenting his requests, CalPERS's actions, and his reliance since 2018.

Dated: October 19, 2026

Respectfully submitted,



MICHAEL F. BRITT

Respondent in propria persona