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Accordingly, IT IS HEREBY ORDERED that:

1. The findings and recommendations filed November 18, 2021, are adopted in full;
2. Plaintiff’s motion for summary judgment (ECF No. 120) is denied; and
3. Defendant’s motion for summary judgment (ECF No. 128) is denied without prejudice to renewal upon providing the contemporaneous notice to plaintiff required under Rand v. Rowland, 154 F.3d 952, 957 (9th Cir. 1998). Such renewed motion shall be filed within thirty days from the date of service of this order.

Dated: December 20, 2021

/s/ John A. Mendez  
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THE HONORABLE JOHN A. MENDEZ  
UNITED STATES DISTRICT COURT JUDGE