

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

JUN 21 2023

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

RICHARD HEIM, deceased, by and through
his personal legal representative and
successor in interest, Tracy Heim; TRACY
HEIM,

Plaintiffs-Appellees,

v.

1495 CAMERON AVENUE, LLC, DBA
West Haven Healthcare Center, a Skilled
Nursing Facility; DEUTSCH 2016 GRAT, a
business organization, form unknown;
MAYER 2005 REVOCABLE TRUST, a
trust; MAYER 2012 TRUST, a trust,

Defendants-Appellants,

and

DOES, 1-25, inclusive,

Defendant.

No. 21-56010

D.C. No.

2:21-cv-06221-PA-ADS

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Percy Anderson, District Judge, Presiding

* This disposition is not appropriate for publication and is not precedent
except as provided by Ninth Circuit Rule 36-3.

Submitted June 20, 2023**

Before: WALLACE, O’SANNLAIN, and SILVERMAN, Circuit Judges.

1495 Cameron Avenue, LLC (doing business as West Haven Healthcare Center), Deutsch 2016 GRAT, Mayer 2005 Revocable Trust, and Mayer 2012 Trust (collectively, West Haven) appeal from the district court’s order remanding this case to state court for lack of federal subject matter jurisdiction. West Haven argues that the district court had three independent grounds for such jurisdiction: federal officer removal, complete preemption, and the presence of an embedded federal question.

I

The district court did not have federal subject matter jurisdiction under the federal officer removal statute, 28 U.S.C. § 1442(a)(1), because West Haven’s actions were not “taken pursuant to a federal officer’s directions.” *Saldana v. Glenhaven Healthcare LLC*, 27 F.4th 679, 684 (9th Cir. 2022) (cleaned up). While West Haven has demonstrated that, like the defendants in *Saldana*, it was subject to federal laws and regulations throughout the COVID-19 pandemic, “simply *complying* with a law or regulation is not enough to bring a private person within the scope of the [federal officer removal] statute.” *Id.* (cleaned up). Similarly, recommendations, advice, and encouragement from federal entities do not amount

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

to the type of control required for removal under the statute. *See id.* at 685.

II

The district court did not have federal subject matter jurisdiction under the doctrine of complete preemption because the Public Readiness and Emergency Preparedness (PREP) Act, 42 U.S.C. §§ 247d-6d, 247d-6e, is not a complete preemption statute—that is, it is not one of those “rare” statutes “where a federal statutory scheme is so comprehensive that it entirely supplants state law causes of action.” *Saldana*, 27 F.4th at 686 (cleaned up). While the PREP Act may preempt some state-law claims, any such conflict preemption would be an affirmative defense, and would not create federal subject matter jurisdiction. *See id.* at 688.

III

The district court did not have embedded federal question jurisdiction because the state-law causes of action in the complaint do not “necessarily” raise “substantial” federal issues that are “actually disputed” and “capable of resolution in federal court without disrupting the federal-state balance approved by Congress.” *Id.* at 688 (cleaned up). Although a federal defense may be available under the PREP Act, “a federal defense is not a sufficient basis to find embedded federal question jurisdiction.” *Id.*

IV

In short, all of West Haven’s challenges are controlled by *Saldana*. West

Haven argues that *Saldana* was wrongly decided, but cites no “clearly irreconcilable” intervening authority permitting us to overrule it. *Miller v. Gammie*, 335 F.3d 889, 900 (9th Cir. 2003) (en banc). Accordingly, we apply *Saldana*.¹

AFFIRMED.

¹ West Haven’s motion for judicial notice, Docket No. 18, is **GRANTED**.