

FOR PUBLICATION

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

JONATHAN SCHMIDT,

Plaintiff - Appellant,

v.

CITY OF PASADENA; JENNIFER
CURTIS; VICTOR GORDO;
KRISTIN HUNSBERGER;
ALEXANDER SOUTO; STEPHEN
BRUCE MERMELL,

Defendants - Appellees,

and

DOES 4-100,

Defendant.

No. 25-488

D.C. No.
2:21-cv-08769-
JAK-JC

OPINION

Appeal from the United States District Court
for the Central District of California
John A. Kronstadt, District Judge, Presiding

Submitted June 24, 2026*
Pasadena, California

Filed October 5, 2026

Before: Kim McLane Wardlaw, John B. Owens, and Ana
de Alba, Circuit Judges.

Opinion by Judge de Alba

SUMMARY**

PREP Act / COVID-19 Vaccination Policy

The panel affirmed (1) the district court’s dismissal of Jonathan Schmidt’s 42 U.S.C. § 1983 action against the City of Pasadena and individually named City employees, alleging that the City’s COVID-19 safety policy requiring unvaccinated employees to complete weekly COVID testing and wear masks in shared spaces unlawfully harmed him, and (2) the district court’s denial of his motion for reconsideration.

In August 2021, the City of Pasadena implemented a COVID-19 vaccination policy for its employees that required City employees to either receive the COVID-19 vaccination by September 17, 2021, or request a medical or

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

** This summary constitutes no part of the opinion of the court. It has been prepared by court staff for the convenience of the reader.

religious exemption from the vaccination requirement. Schmidt, a forensic specialist in the Pasadena Police Department, requested and received a religious exemption from the vaccine requirement, but was required to test and wear a mask. He contends that the defendants created a hostile work environment by revealing his unvaccinated status through the masking and testing requirements.

The panel held that the defendants have immunity from all of Schmidt's claims under the Public Readiness and Emergency Preparedness ("PREP") Act, which provides immunity from federal and state law claims relating to the administration of certain medical countermeasures during a declared public health emergency. The panel held the statutory requirements of PREP Act immunity were met where: (1) both the City and individual defendants qualify as "covered person[s]" under the PREP Act because both engaged in the administration of a covered countermeasure; (2) the COVID-19 testing and face masks required by the City's policy meet the PREP Act's requirements for being considered a "covered countermeasure"; and (3) Schmidt's claims were "caused by, arising out of, relating to, or resulting from" the administration of a covered countermeasure.

Clarifying the causation requirement of the PREP Act's immunity provision, the panel wrote that the district court erred by focusing on the types of legal claims Schmidt pleads rather than the type of injury he alleges. The panel held that Schmidt's allegations that he suffered physical, emotional, and property damage as a direct result of the City's COVID-19 safety policies are sufficient to establish causation for PREP Act immunity.

The panel further held that Schmidt failed to allege a valid ground for reconsideration or for finding that the district court abused its discretion in managing his case.

COUNSEL

Vasu Vijayraghavan, Laguna Beach, California, for Plaintiff-Appellant.

Matthew B. Nazareth, Margaret W. Rosequist, and Deborah J. Fox, Meyers Nave, Los Angeles, California; Lesley Cheung, Assistant City Attorney; Michele Beal Bagneris, City Attorney; Pasadena City Attorney's Office, Pasadena, California; for Defendants-Appellees.

OPINION

DE ALBA, Circuit Judge:

Jonathan Schmidt appeals the district court's dismissal of his 42 U.S.C. § 1983 action against the City of Pasadena and individually named City employees, and its denial of his motion for reconsideration. Schmidt, an employee of the City of Pasadena, alleges the City's COVID-19 safety policy requiring unvaccinated employees to complete weekly COVID testing and wear masks in shared spaces unlawfully harmed him. We hold that Defendants have immunity from all of Schmidt's claims under the Public Readiness and Emergency Preparedness ("PREP") Act. Furthermore, because Schmidt fails to allege a valid ground for reconsideration or for finding that the district court abused

its discretion in managing his case, we affirm the district court's dismissal and denial of his motion for reconsideration.

I. Background

A. Factual Background

In August 2021, the City of Pasadena implemented a COVID-19 vaccination policy for its employees to “stem [the] rapid increase in COVID-19 transmission” resulting from the Delta variant of the virus. The policy required City employees to either (1) receive the COVID-19 vaccination by September 17, 2021, or (2) request a medical or religious exemption from the vaccination requirement.

The City's human resources department was charged with reviewing requests for exemptions, including exemptions for sincerely held religious beliefs or practices that would prohibit an employee from receiving a vaccine, which would then trigger testing and masking accommodations.

Schmidt is a forensic specialist in the Pasadena Police Department. As an employee of the City, Schmidt was subject to the City's vaccination policy. Schmidt requested and received a religious exemption from the vaccine requirement, but was required to test and wear a mask.

Schmidt was placed on unpaid administrative leave for refusing to test and mask, and eventually agreed to comply with those provisions so that, in November 2021, he could return to work.

Yet, Schmidt alleged, he continued to take issue with the City's implementation of the COVID-19 safety policy once he returned to work, and he contends that Defendants created

a hostile work environment by revealing his unvaccinated status through the masking and testing requirements.

Nevertheless, Schmidt complied until the City rescinded the policy in March 2022.

B. Procedural History

Schmidt originally filed this action on November 8, 2021, and five iterations of his complaint ultimately ensued. For the purposes of this appeal, the operative complaints are Schmidt's Third Amended Complaint ("TAC") and Fourth Amended Complaint ("FAC").

The TAC asserted twenty-one federal and state claims, all related to the testing and masking requirements, against the City and several current and former employees of the city. Defendants moved to dismiss, asserting among other defenses that they had immunity under the PREP Act. The district court concluded that the PREP Act applied but did not immunize the individual Defendants from all of Schmidt's claims. Nevertheless, it found that the individual Defendants were entitled to other forms of immunity and dismissed the entire TAC.

Schmidt then filed the FAC. The City moved to dismiss, and Schmidt moved for reconsideration of the TAC dismissal based on what he argued was new evidence regarding the COVID-19 testing that he underwent. The district court denied Schmidt's request for reconsideration. The court reasoned that the evidence Schmidt raised was previously available and was not enough to cure the legal deficiencies underlying the TAC's dismissal. In addition, the court granted Defendants' motion to dismiss the FAC, and denied the remaining discovery motions as moot.

The district court entered judgment for Defendants in January 2025. Schmidt timely appealed.

II. Jurisdiction and Standard of Review

We have jurisdiction pursuant to 28 U.S.C. § 1291. We review a district court’s dismissal of a complaint under Federal Rule of Civil Procedure 12(b)(6) *de novo*. *Steinle v. City & Cnty. of San Francisco*, 919 F.3d 1154, 1160 (9th Cir. 2019) (citation omitted); *Benavidez v. Cnty. of San Diego*, 993 F.3d 1134, 1141 (9th Cir. 2021). To survive a motion to dismiss, the plaintiff must provide “a short and plain statement of the claim showing the pleader is entitled to relief,” containing “sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face.” *Disability Rts. Montana, Inc. v. Batista*, 930 F.3d 1090, 1096 (9th Cir. 2019) (citations omitted). On a motion to dismiss, we “take all allegations of material fact as true and construe them in the light most favorable to the nonmoving party.” *Id.* at 1097. We may affirm a dismissal “on any grounds supported by the record.” *Steinle*, 919 F.3d at 1160; *Sonner v. Premier Nutrition Corp.*, 971 F.3d 834, 839 (9th Cir. 2020). “Review is limited to the complaint, materials incorporated into the complaint by reference, and matters of which the court may take judicial notice” *Petrie v. Elec. Game Card, Inc.*, 761 F.3d 959, 966 (9th Cir. 2014) (citation omitted).

We review a district court’s decisions as to requests for judicial notice, motions for reconsideration, recusals, and Rule 11 sanctions for abuse of discretion. *See Ritter v. Hughes Aircraft Co.*, 58 F.3d 454, 458 (9th Cir. 1995) (judicial notice); *Do Sung Uhm v. Humana, Inc.*, 620 F.3d 1134, 1140 (9th Cir. 2010) (motion for reconsideration); *United States v. Carey*, 929 F.3d 1092, 1104 (9th Cir. 2019)

(recusal); *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 409 (1990) (Rule 11 determinations).

III. Discussion

Defendants assert that all of Schmidt’s claims are barred by the PREP Act. 42 U.S.C. § 247d-6d. The PREP Act “provides immunity from federal and state law claims relating to the administration of certain medical countermeasures during a declared public health emergency.” *Polanco v. Diaz*, 76 F.4th 918, 932 (9th Cir. 2023). On the face of Schmidt’s complaint, Defendants are entitled to immunity under the PREP Act. Moreover, Schmidt has failed to allege a valid ground for reconsideration of the TAC dismissal or for finding abuse of discretion in how the district court managed his case. We therefore affirm the district court’s dismissal on the grounds of PREP Act immunity. *See Steinle*, 919 F.3d at 1160; *Sonner*, 971 F.3d at 839.

A. PREP Act

“Congress passed the PREP Act in 2005 to encourage during times of crisis the development and deployment of medical countermeasures (such as diagnostics, treatments, and vaccines) by limiting legal liability relating to their administration.” *Hampton v. California*, 83 F.4th 754, 762 (9th Cir. 2023) (citation modified); *see also Maney v. Brown*, 91 F.4th 1296, 1298 (9th Cir. 2024). The statute provides “covered persons” immunity “from suit and liability” for “claims for loss caused by, arising out of, relating to, or resulting from the administration to or the use by an individual of a covered countermeasure.” *Maney*, 91 F.4th at 1298 (quoting 42 U.S.C. § 247d-6d(a)(1)). This immunity “applies to any claim for loss that has a causal relationship

with the administration to or use by an individual of a covered countermeasure.” 42 U.S.C. § 247d-6d(a)(2)(B).

“The Act’s immunity lies dormant until the Secretary of Health and Human Services makes a determination that a disease constitutes a public health emergency and makes a declaration, through publication in the Federal Register, that the Act’s immunity is in effect.” *Hampton*, 83 F.4th at 762 (citing 42 U.S.C. § 247d-6d(b)(1)) (citation modified). The HHS Secretary “controls the scope of immunity through the declaration and amendments, within the confines of the PREP Act.” *Saldana v. Glenhaven Healthcare LLC*, 27 F.4th 679, 687 (9th Cir. 2022) (citation modified). The HHS Secretary’s declaration “may specify[] the manufacture, testing, development, distribution, administration, or use of one or more covered countermeasures” giving rise to immunity. 42 U.S.C. § 247d-6d(b)(1). “The scope of immunity is broad.” *Maglioli v. All. HC Holdings LLC*, 16 F.4th 393, 401 (3d Cir. 2021).

As relevant in this case, such a declaration was issued by the HHS Secretary as part of the federal government’s response to the COVID-19 pandemic. In March 2020, the HHS Secretary declared that COVID-19 “constitutes a public health emergency” and ordered that “immunity as prescribed in the PREP Act” was “in effect” for the “manufacture, testing, development, distribution, administration, and use of” covered countermeasures. Declaration Under the Public Readiness and Emergency Preparedness Act for Medical Countermeasures Against COVID-19, 85 Fed. Reg. 15198, 15201 (Mar. 17, 2020). Municipalities administering and using covered countermeasures may be entitled to liability protection under the PREP Act for actions taken from February 4, 2020, to

May 11, 2023.¹ *See* Twelfth Amendment to Declaration Under the Public Readiness and Emergency Preparedness Act for Medical Countermeasures Against COVID–19, 89 Fed. Reg. 99875, 99876, 99882 (Dec. 11, 2024) (defining scope and effective time period of liability protections).

All of Schmidt’s claims arise from the City of Pasadena’s implementation of a COVID-19 testing and masking policy for its employees. He alleges that he was harmed by these requirements from November 2021, when he returned to work after agreeing to comply with the City’s COVID-19 safety policy, through March 2022, when the City rescinded the policy. This five-month period is plainly within the Declaration’s effective time period. *See* 42 U.S.C. § 247d-6d(a)(3) (stating that immunity is only available if the “countermeasure was administered or used during the effective period of the declaration”).

With this threshold question satisfied, we must determine whether Defendants’ implementation of its COVID-19 testing and masking policy meets the PREP Act’s requirements for immunity. In other words, we must determine (1) whether the City and the individual

¹ When the liability protection period began depends on whether the municipality is considered a “program planner” or an “Authority Having Jurisdiction” under the Declaration. *See* Twelfth Amendment to Declaration Under the Public Readiness and Emergency Preparedness Act for Medical Countermeasures Against COVID–19, 89 Fed. Reg. 99875, 99882 (Dec. 11, 2024). The liability protection period for “program planner[s]” began on February 4, 2020, whereas the protection period for an “Authority Having Jurisdiction” began on January 31, 2020. *Id.* For reasons explained later in this opinion, we consider the City to be a “program planner,” as defined in the PREP act. *See infra* Section III.A.1. Regardless, under either definition, Schmidt’s claims still fall within the Declaration’s proscribed time period.

Defendants are “covered person[s]”; (2) whether the City’s COVID-19 testing and masking policy constitutes a “covered countermeasure”; and (3) whether Schmidt’s claims were “caused by, arising out of, relating to, or resulting from” the administration of a covered countermeasure. *See* 42 U.S.C. § 247d-6d(a)(1). Because each of these statutory requirements is met, Defendants are entitled to PREP Act immunity for all of Schmidt’s claims.

1. Covered Persons

Because both the City and individual Defendants engaged in the “administration of a covered countermeasure,” both qualify as “covered persons” under the Act. *See* 42 U.S.C. § 247d-6d(a)..

The PREP Act defines “covered person[s]” as follows:

The term “covered person”, when used with respect to the administration or use of a covered countermeasure, means--

(A) the United States; or

(B) a person or entity that is--

(i) a manufacturer of such countermeasure;

(ii) a distributor of such countermeasure;

(iii) a program planner of such countermeasure;

(iv) a qualified person who prescribed, administered, or dispensed such countermeasure; or

(v) an official, agent, or employee of a person or entity described in clause (i), (ii), (iii), or (iv).

Id. § 247d-6d(i)(2).

A “program planner” is further defined as:

“[A] State or local government, including an Indian tribe, person employed by the State or local government, or other person who supervised or administered a program with respect to the administration, dispensing, distribution, provision, or use of a security countermeasure or a qualified pandemic or epidemic product, including a person who has established requirements, provided policy guidance, or supplied technical or scientific advice or assistance or provides a facility to administer or use a covered countermeasure in accordance with a declaration under subsection (b)”

Id. § 247d-6d(i)(6).

On the face of his FAC, Schmidt concedes that each individually named defendant was involved in the implementation of the City’s COVID-19 testing-and-mask requirements for employees. Because they are “person[s] who supervised or administered a program with respect to the administration. . . of a security countermeasure,” the individually named defendants constitute “covered persons” under the PREP Act. *Id.*

The allegations in Schmidt’s FAC also establish that the City is an eligible “covered person.” One of the

fundamental, and undisputed, facts in Schmidt’s complaint is that the City of Pasadena issued a vaccine and mask “mandate” for its employees. Broadly speaking, “[t]he purpose of this policy [was] to provide a safe work environment and protect the health and safety of City of Pasadena employees, and the public.” The City’s COVID-19 safety requirements applied to “all City employees”—all employees were required to either be fully vaccinated for COVID-19 or, otherwise, regularly test for COVID-19 and mask. In issuing its mandate, the City, under its authority as a local government, made “policy-level decisions regarding administration or use of covered countermeasures.” *Maney*, 91 F.4th at 1301 (interpreting the definition of “program planner” under 42 U.S.C. § 247d-6d(i)(2)(B)(iii)). The City therefore constitutes a “program planner,” and t a “covered person” under the PREP Act. *See id.*; 42 U.S.C. § 247d-6d(i)(2)(B)(iii).

2. Covered Countermeasure

Schmidt argues that COVID-19 tests and face masks cannot be considered “covered countermeasures” under case precedent, federal statute, and HHS regulations. None of his arguments are availing. Both the PREP Act and the HHS Secretary’s Declaration plainly extend immunity for the administration of COVID-19 tests and masks.

Under the PREP Act, “covered countermeasures” are defined as products “manufactured, used, designed, developed, modified, licensed, or procured—(I) to diagnose, mitigate, prevent, treat, or cure a pandemic or epidemic; or (II) to limit the harm such pandemic or epidemic might otherwise cause.” 42 U.S.C. § 247d-6d(i)(7)(A)(i). Covered countermeasures under the PREP Act must receive some kind of federal authorization for use in accordance with the

Federal Food, Drug, and Cosmetic Act. *See* 21 U.S.C. § 351 *et seq.*; *see also* 42 U.S.C. §§ 247d-6d(i)(1), (6), (7); 42 U.S.C. § 247d-6b(c)(1)(B). An Emergency Use Authorization (“EUA”) from the Food and Drug Administration (“FDA”) is sufficient to meet this requirement. *Id.* § 247d-6d (i)(7)(B)(iii).

The HHS Secretary elaborated on what constituted covered countermeasures for responding to the COVID-19 pandemic in its declarations. The Twelfth Amendment to the Declaration defined covered countermeasures as “[a]ny antiviral, any drug, any biologic, any diagnostic, any other device, any respiratory protective device, or any vaccine manufactured, used, designed, developed, modified, licensed, or procured to diagnose, mitigate, prevent, treat, or cure COVID-19, or the transmission of SARS-CoV-2 or a virus mutating therefrom.” 89 Fed. Reg. at 99880. We have previously found that the HHS Secretary defined “‘covered countermeasures’ about as broadly as the [PREP] Act permits.” *Hampton*, 83 F.4th at 763–64; *see also* 42 U.S.C. § 247d-6d(b)(4) (stating that amendments to declarations shall not retroactively limit the applicability of the PREP Act’s immunity provision).

Accordingly, the saliva test and mask requirements the City imposed plainly constitute a “diagnostic” and a “respiratory protective device” under the Declaration’s broad definition of “covered countermeasures.” Schmidt does not necessarily dispute that the saliva test and face masks constitute a “diagnostic” and “respiratory protective device.” Rather, he contends that the measures were ineffective and unauthorized. We agree that both measures require some kind of federal authorization. *See* 21 U.S.C. § 351 *et seq.*; *see also* 42 U.S.C. §§ 247d-6d(i)(1), (6), (7); 42 U.S.C. § 247d-6b(c)(1)(B). However, we find that both

challenged measures in this case had the statutorily required authorization needed to be considered “covered countermeasures.”

In challenging the City’s use of the saliva tests, Schmidt contends that “the saliva test was explicitly excluded as a valid diagnostic device” in the EUA granted to Ultimate DX for its COVID-19 test. Thus, according to Schmidt, the saliva test cannot be considered a “covered countermeasure.” However, Schmidt misstates the scope of authorization Ultimate DX’s EUA provided.

Per Ultimate DX’s accelerated EUA summary, “[t]he performance of UDX SARS-CoV-2 Molecular Assay was established using nasopharyngeal swabs.” The summary further explains that “[n]asal swabs, mid-turbinate nasal swabs and oropharyngeal swabs are also considered acceptable specimen types for use with the UDX SARS-CoV-2 Molecular Assay but performance has not been established.” Finally, the summary warns “[o]ther extraction approaches” may lead to false-negative results.

Nothing in the EUA summary expressly limits the use of Ultimate DX’s diagnostic tool under the EUA to particular collection methods. The absence of such limiting language is notable given that the summary explicitly states that the use of [Ultimate DX’s] diagnostic under the EUA “is limited to laboratories that are certified under the Clinical Laboratory Improvement Amendments of 1988 (CLIA), 42 U.S.C. § 263a, to perform high complexity tests” and “limited to personnel who are trained in the procedure.” The summary discusses collection methods to warn that the “[f]ailure to follow these instructions may result in erroneous results,” not to limit the scope of the EUA. See *McGinity v. Procter & Gamble Co.*, 69 F.4th 1093, 1096 (9th Cir. 2023)

(“Determining whether a complaint states a plausible claim for relief is a ‘context-specific task,’ requiring ‘the reviewing court to draw on its judicial experience and common sense.’”) (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009)); *Eclectic Props. E., LLC v. Marcus & Millichap Co.*, 751 F.3d 990, 996 (9th Cir. 2014) (“When considering plausibility, courts must also consider an ‘obvious alternative explanation’ for [the] defendant’s behavior.”). Schmidt’s characterization of the EUA’s scope is simply incorrect. Indeed, the allegations in Schmidt’s complaint establish that the COVID-19 diagnostic administered by the City received the required authorization. Thus, the COVID-19 tests the City administered meet the statutory requirements to be considered “covered countermeasures.” See 42 U.S.C. §§ 247d-6d(i)(1), (6), (7); 42 U.S.C. § 247d-6b(c)(1)(B).²

Face masks also constitute a “covered countermeasure” under the HHS Secretary’s Declaration. Again, face masks are included in the Declaration’s definition of “covered countermeasures” as a “respiratory protective device” used to “prevent” the transmission of the virus. 89 Fed. Reg. at 99880 (discussing definition and permissible activities in Sections VI and VII(b)). Additionally, the FDA granted a broad EUA “authorizing the use of face masks for use by

² While the district court cited our opinion in *Hampton* for the proposition that “all agree that COVID tests are ‘covered countermeasures,’” we note that our decision in that case did not establish a *per se* rule that COVID-19 tests constitute “covered countermeasures” in all instances. Our statement in *Hampton* was limited to explaining that the parties in that case had conceded that COVID-19 tests were “covered countermeasures.” *Hampton*, 83 F.4th at 764. Sufficient factual allegations are still necessary for a Defendant to establish their entitlement to immunity under the PREP Act.

members of the general public . . . to prevent the spread of the virus.” Authorization was granted broadly enough to even cover “cloth face coverings.” Schmidt has not alleged that the City’s face mask requirement fell outside of the Declaration or EUA’s scope. Thus, on the face of Schmidt’s complaint, masks constitute a “covered countermeasure.”

Per the facts alleged in Schmidt’s complaint, both the COVID-19 testing and face masks the City’s policy required were covered by the HHS Secretary’s definition of “covered countermeasure” and approved for emergency use.³ Thus, both meet the PREP Act’s requirements for being considered a “covered countermeasure.”

3. Causation and Injury

In dismissing the FAC, the district court found that Defendants were entitled to immunity under the PREP Act for only two of Schmidt’s claims, violations of Cal. Const. Art. 1 Secs. 1 and 7—i.e., the alleged deprivation without due process of Schmidt’s purported property interest in his “DNA.” The district court did not find that PREP Act immunity applied to Schmidt’s remaining claims, incorporating the reasoning from its earlier dismissal of the TAC that while Schmidt’s “claims involve alleged emotional injury,” his “claims primarily involve reputational harms for which [he] has not pleaded any emotional effect.”

³ Schmidt argues that *Loper Bright v. Raimondo*, 603 U.S. 369 (2024), permits us to disregard the HHS Secretary’s definition of “covered countermeasure.” However, even under *Loper Bright*, we must respect when Congress has “expressly delegated to an agency the authority to give meaning to a particular statutory term.” *Id.* at 394–95 (citation modified). Schmidt has not alleged that the PREP Act’s grant of authority is ambiguous nor that HHS has acted outside its statutory authority. *See id.* at 412–13. Therefore, *Loper Bright* is inapplicable.

This determination misunderstood the causation requirement for PREP Act immunity. As such, we take this opportunity to clarify the causation requirement of the PREP Act's immunity provision.

The PREP Act provides immunity “with respect to all claims for loss caused by, arising out of, relating to, or resulting from the administration to or the use by an individual of a covered countermeasure.” 42 U.S.C. § 247d-6d(a)(1). “The causal relationship is satisfied if any of these four terms applies.” *See Dressen v. AstraZeneca AB*, 182 F.4th 1232, 1253 (10th Cir. 2026); *see also Hampton*, 83 F.4th at 764 (“[F]or PREP Act immunity to apply, the underlying use or administration of a covered countermeasure must have played *some* role in bringing about or contributing to the plaintiff's injury.”) (emphasis added)). The PREP Act further defines “loss” as “any type of loss, including (i) death; (ii) physical, mental, or emotional injury, illness, disability, or condition; (iii) fear of physical, mental, or emotional injury, illness, disability, or condition, including any need for medical monitoring; and (iv) loss of or damage to property, including business interruption loss.” 42 U.S.C. § 247d-6d(a)(2).

The Tenth Circuit's recent decision in *Dressen v. AstraZeneca AB* is helpful for understanding the PREP Act's causation requirement. In *Dressen*, the plaintiff argued that the defendant was not entitled to immunity from her claims because her claims were based in contract law, not tort law. *Dressen*, 182 F.4th at 1245. The Tenth Circuit rejected the plaintiff's argument, finding that “[t]he PREP Act's immunity provision says nothing about shielding covered persons from specific causes of action.” *Id.* The court noted that the plaintiff's prayer for relief sought both economic damages, such as past and future medical expenses, past and

future loss of household services, childcare expenses, past and future lost income, and past and future transportation costs, and non-economic damages, including emotional damages. *Id.*

Similarly, here, Schmidt seeks damages for alleged mental and emotional injury and loss of property. In his FAC, Schmidt expressly alleges he suffered “emotional and physical harm” by complying with the City’s COVID-19 safety policies. Furthermore, Schmidt’s foundational argument—underlying each of the claims in his FAC—is that the City and individually named Defendants deprived him of his property interests in his DNA. Assuming without holding that Schmidt had any property interest in the saliva samples he provided for COVID-19 testing, Schmidt’s complaint plainly alleges a loss of property.

The district court focused on the types of legal claims Schmidt pleads rather than the type of injury he alleges. This was incorrect. We agree with the Tenth Circuit that “the PREP Act’s phrase ‘all claims for loss’ is limited by the statute’s causation requirement, not by the category of the legal claim.” *Id.* at 1246; *cf. Maney*, 91 F.4th at 1302–03 (holding that PREP Act immunity applies to claims under 42 U.S.C. § 1983). And Schmidt has not argued, nor did the district court find, that the damages he seeks for his alleged “emotional and physical harm” and loss of property are recoverable only through his claims under Cal. Const. Art. 1 Secs. 1 and 7. *See Dressen*, 182 F.4th at 1245 (noting that plaintiff had “ma[de] no effort to show that [her] losses [were] recoverable only through tort claims”).

Schmidt alleges that he suffered physical, emotional, and property damage as a direct result of the City’s COVID-19 safety policies. These allegations are sufficient to establish

causation for PREP Act immunity. *See Hampton*, 83 F.4th at 754; *see also Dressen*, 182 F.4th at 1253 (“[W]e think it safe to say that a causal relationship satisfies the [PREP] Act when it meets the simple and traditional standard of but-for causation.”) (citation modified).

For the aforementioned reasons, we find that the City and individually named Defendants are “covered person[s]” entitled to immunity “from suit and liability” from Schmidt’s claims regarding the administration of the City’s COVID-19 testing and mask protocols for its employees under the PREP Act. *See* 42 U.S.C. § 247d-6d(a)(1).⁴

B. Schmidt’s Other Challenges

Finally, Schmidt proposes several different bases for finding that the district court abused its discretion. While the nature of Schmidt’s exact challenges is unclear, the record establishes that the district court did not abuse its discretion in any manner.

1. Motion for Reconsideration

Schmidt argues that “[t]he narrative that the court below entertained regarding the SARS-COV2 virus, the pandemic, the necessity of the countermeasures such as tests, vaccines and masks, was fundamentally at odds with the totally new evidence on the same presented by Schmidt’s two proposed experts, Dr. David Rasnick and Dr. Jonathan Jay Couey.” Thus, Schmidt reasons, the court should have granted the motion to reconsider the TAC dismissal. The problem with Schmidt’s assertion, in general, is his characterization of the expert evidence as “new.”

⁴ Because we find the Defendants entitled to immunity under the PREP Act, we decline to reach the merits of Schmidt’s other arguments.

A district court may revise an order “that adjudicates fewer than all the claims or the rights and liabilities of all the parties . . . at any time before the entry of a judgment.” Fed. R. Civ. P. 54(b). Reconsideration under Rule 54(b) is appropriate “(1) if such motion is necessary to correct manifest errors of law or fact upon which the judgment rests; (2) if such motion is necessary to present newly discovered or previously unavailable evidence; (3) if such motion is necessary to prevent manifest injustice; or (4) if the amendment is justified by an intervening change in controlling law.” *Allstate Ins. Co. v. Herron*, 634 F.3d 1101, 1111 (9th Cir. 2011) (discussing Fed. R. Civ. P. 59(e)); *see also Lyden v. Nike Inc.*, No. 13-CV-00662-HZ, 2014 WL 4631206, at *1 (D. Ore. Sept. 15, 2014) (“Rule 54(b) does not address the standards a district court should apply when reconsidering an interlocutory order, but several district courts in the Ninth Circuit have applied standards of review substantially similar to those used under Rules 59(e) and 60(b).”). The district court’s local Rule 7-18 similarly provides that such a motion must be based on: a material difference in fact or law from that presented to the Court before such decision; the emergence of new material facts or a change of law occurring after the time of such decision; or a manifest showing of a failure to consider material facts presented to the Court before such decision.

Schmidt’s motion fails to establish any such ground warranting reconsideration of the TAC dismissal. First, his MFR fails to present a valid ground for reconsideration under either Local Rule 7-18 or Fed. R. Civ. P. 54(b). In support of his MFR, Schmidt submitted 20 exhibits—each of which was available to him before the TAC dismissal was issued. In denying the MFR, the district court highlighted that many of the exhibits must have been previously

available because they were submitted to the court prior to the dismissal. The district court also noted that many of the exhibits were time-stamped prior to the issuance of the dismissal. Because the evidence Schmidt relied on in his motion to reconsider was available prior to the district court's TAC dismissal, it was appropriate for the district court to deny the motion.

2. Recusal and Sanctions

Schmidt also accuses the district court judge of improper conduct for failing to recuse himself from the case and for failing to properly rule on Schmidt's Rule 11 sanctions motion. These allegations are baseless.

Contrary to Schmidt's allegations, Judge Kronstadt's investment in mutual funds cannot support a finding of bias as a matter of law. Federal judges are required to recuse themselves in cases where they have a "financial interest." 28 U.S.C. § 455(d)(4)(i). However, "[o]wnership in a mutual or common investment fund that holds securities is *not* a 'financial interest' in such securities unless the judge participates in the management of the fund." *Id.* (emphasis added). Schmidt has not alleged that Judge Kronstadt participates in the management of any mutual fund, and therefore, he does not have a valid claim to challenge Judge Kronstadt's refusal to recuse himself from the case.

Additionally, Schmidt argues the district court erred in denying his Rule 11 sanctions motion because Defendants purportedly disparaged his expert, Dr. Couey, in its briefing by using terms like "conspiracy theory" and "outlandish theories" to describe his assertions. "We recognize that Rule 11 'must be read in light of concerns that it will spawn satellite litigation and chill vigorous advocacy.'" *Townsend v. Holman Consulting Corp.*, 929 F.2d 1358, 1363 (9th Cir.

1990) (citation omitted). Sanctions may be imposed on the signer of a paper if “either a) the paper is filed for an improper purpose, or b) the paper is ‘frivolous.’” *Id.* at 1362. “The word ‘frivolous’ does not appear anywhere in the text of the Rule; rather, it is a shorthand that this court has used to denote a filing that is both baseless and made without a reasonable and competent inquiry.” *Id.*

Defendants’ word choice simply does not meet the criteria for being made without reasonable, competent inquiry. In support of their claims, Defendants submitted several documents establishing the existence of the COVID-19 public health emergency, the need for mitigation, and the scientific information underlying these determinations on a federal, state, and local level.

The record does not show any basis for concluding that the district court abused its discretion. Thus, Schmidt’s remaining challenges fail.

IV. Conclusion

We conclude that the PREP Act’s immunity provision applies to all claims in this case, and we accordingly **AFFIRM** the district court’s dismissal on this basis and its denial of the motion for reconsideration.