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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 JOHNNY DELASHAW, JR.,

11 Plaintiff,

12 v.

13 SEATTLE TIMES COMPANY, et
14 al.,

15 Defendants.

CASE NO. C18-0537JLR

ORDER GRANTING IN PART
AND DENYING IN PART
DEFENDANT CHARLES
COBBS'S SECOND MOTION
FOR SUMMARY JUDGMENT

16 **I. INTRODUCTION**

17 Before the court is a portion of Defendant Charles Cobbs's second motion for
18 summary judgment. (*See* Cobbs 2d MSJ (Dkt. ## 185 (redacted); 188 (sealed)).)
19 Plaintiff Johnny Delashaw, Jr., opposes Dr. Cobbs's motion. (Cobbs 2d MSJ Resp. (Dkt.
20 # 242).) At the direction of the court, the parties filed supplemental briefs to address the
21 question of Dr. Cobbs's possible immunity from damages under the Healthcare Quality
22 Improvement Act ("HCQIA" or "the Act"), 42 U.S.C. § 11111(a). (*See* Cobbs Suppl. Br.

(Dkt. # 289); Delashaw Suppl. Br. (Dkt. # 290).) Dr. Cobbs subsequently filed a motion to strike portions of Dr. Delashaw's supplemental brief. (Cobbs Surreply (Dkt. # 296).) The court has considered the motions, the parties' submissions in support of and in opposition to the motions, and the applicable law. Being fully advised,¹ the court GRANTS in part and DENIES in part Dr. Cobbs's motion to strike. It further GRANTS in part and DENIES in part the remaining portion of Dr. Cobbs's second summary judgment motion.

II. BACKGROUND

The court has discussed the procedural and factual backgrounds of this case in detail in its prior orders on motions for summary judgment. (*See* 6/11/20 MSJ Order (Dkt. ## 160 (sealed); 207 (redacted)) at 2-28; 12/11/20 Am. Order (Dkt. ## 298 (sealed); 300 (redacted)) at 2-9.) Therefore, the court only discusses the facts most relevant to the instant motion below.

A. Factual Background and Claims Against Dr. Cobbs

Dr. Delashaw is a neurosurgeon who took a position at Swedish Medical Center ("Swedish") in 2013 and remained employed at Swedish's Cherry Hill campus in Seattle, Washington (hereinafter, "Cherry Hill" or "Swedish-Cherry Hill") until 2017. (3/2/20 Delashaw Decl. (Dkt. # 126) ¶ 2.) In early 2015, he was promoted to Chairman of Neurosurgery and Spine at the Swedish Neuroscience Institute ("SNI"). (*Id.*)

¹ Neither party requests oral argument (*see* Cobbs 2d MSJ at 1; Cobbs 2d MSJ Resp. at 1; Cobbs Suppl. Br. at 1; Delashaw Suppl. Br. at 1), and the court finds oral argument unnecessary to its disposition of the motion, *see* Local Rules W.D. Wash. LCR 7(b)(4).

1 On December 20, 2016, Swedish CEO Anthony Armada informed Dr. Delashaw
2 that Swedish had “documented repeated and numerous complaints about your
3 leadership,” and despite Swedish’s efforts to counsel and support Dr. Delashaw, Swedish
4 “continue[s] to hear the concerns and the concerns are growing.” (*See* 2/6/20 Goldman
5 Decl. (Dkt. # 108) ¶ 5, Ex. 3 at JDEL_027310.) Mr. Armada notified Dr. Delashaw that
6 Swedish could no longer keep him as Chair of Neurosurgery and would instead move
7 him into an administrative role as “Chair Emeritus of Neurosurgery at SNI.” (*See id.*) In
8 this new position, Dr. Delashaw would continue to focus on his clinical practice, lead
9 SNI’s philanthropic efforts, and help recruit neurosurgeons to Swedish. (*See id.*)
10 However, effective immediately, Swedish planned to transition the management of the
11 neurosurgery practice at SNI to an interim Chair of Neurosurgery. (*See id.*)

12 The instant motion is centered around a letter (the “Letter”) that Dr. Cobbs
13 originally sent on November 4, 2016, to Mr. Armada, Rod Hochman, and June Alataras
14 regarding Dr. Delashaw via email. (*See* 3/16/20 Pratt Decl. (Dkt. # 141) ¶ 19, Ex. 21
15 (“November 2016 Letter”); Am. Compl. (Dkt. # 25-1) ¶¶ 73-78.) Over the next few
16 weeks after sending the letter, Dr. Cobbs distributed it to several other individuals. On
17 November 5, 2016, Dr. Cobbs sent a copy of the November 2016 Letter to his fellow SNI
18 surgeons Drs. Ryder Gwinn, Stephen Monteith, and Akshal Patel, as well as to a man
19 named Michael Vatis, who does not appear to work at Swedish. (*See* 3/16/20 Pratt Decl.
20 ¶¶ 20, 33, Exs. 22, 39.) On November 7, 2016, Dr. Cobbs also emailed the Letter to Dr.
21 David Newell, who did not work at Swedish at that time. (*See id.* ¶ 33, Ex. 39.) On
22 November 8, 2016, he sent the Letter to Swedish Medical Group’s (“SMG”) CEO, Dr.

1 Ralph Pascualy. (7/27/20 Pratt Decl. (Dkt. # 243) ¶ 26, Ex. 25.) On November 17,
2 2016, Dr. Cobbs emailed the November 2016 Letter to Dr. Peggy Hutchinson (the
3 “Hutchinson Email”) and cc’d a group of individuals that he allegedly believed were part
4 of Swedish’s Medical Executive Committee (“MEC”). (See 3/16/20 Pratt Decl. ¶ 22, Ex.
5 24 (“Hutchinson Email”); 7/27/20 Pratt Decl. ¶ 23, Ex. 22 (“Pascualy Texts”) at 10-12
6 (text message conversation between Dr. Cobbs and Dr. Pascualy discussing plan to send
7 Letter to MEC); (Cobbs 2d MSJ Reply (Dkt. ## 247 (redacted); 250 (sealed)).)

8 The November 2016 Letter outlined several concerns allegedly raised by
9 physicians, nurses, and staff about Dr. Delashaw that fell into the following categories:
10 (i) a pattern of intimidation, harassment, and retaliation; (ii) discouraging the reporting of
11 errors; (iii) discouraging staff from asking questions; (iv) contributing to the loss of
12 experienced personnel; (v) jeopardizing patient safety with disruptive behavior; and (vi)
13 interfering with other physicians’ referrals and practices. (See 2/27/20 Baer Decl. (Dkt.
14 # 117) ¶ 3, Ex. 26.) Although Dr. Cobbs was the only signatory to the November 2016
15 Letter, he received input from multiple Swedish surgeons on its content. (See *id.* ¶ 3,
16 Exs. 27-33.) Dr. Cobbs testified that he omitted the names of the other surgeons from his
17 Letter because he believed that those surgeons were afraid of retaliation from Dr.
18 Delashaw. (See *id.* ¶ 3, Ex. 25 (“Cobbs Dep.”) at 192:19-193:5.) Dr. Delashaw alleges
19 that Dr. Cobbs’s statements resulted in “extreme reputational harm and loss of
20 employment opportunities.” (Am. Compl. ¶ 196.)

21 Dr. Delashaw also brings claims of civil conspiracy and tortious interference with
22 a business expectancy against Dr. Cobbs. (*Id.* ¶¶ 197-208.) Dr. Delashaw’s civil

conspiracy claims arise out of Dr. Cobbs allegedly working with Dr. Marc Mayberg and others to harm Dr. Delashaw's career and reputation. (*Id.* ¶ 205.) While Dr. Delashaw is not entirely clear on what conduct was a part of this alleged conspiracy and how it was unlawful, his claim encompasses some allegedly defamatory statements made in the November 2016 Letter. (*See id.* ¶ 206 (claiming that Dr. Cobbs and his conspirators "[d]evis[ed] false complaints to pressure SNI management into taking action against Dr. Delashaw and falsely representing to management that complaints were 'unanimous' views of SNI's faculty").) Dr. Delashaw's tortious interference claim alleges that Dr. Cobbs interfered with Dr. Delashaw's business relationship with Swedish "through improper means, including defamation and Dr. Cobbs's violation of his obligations to Swedish." (*Id.* ¶¶ 198-201.)

B. Procedural History

On November 18, 2020, the court granted in part and denied in part Dr. Cobbs's second motion for summary judgment. (*See* 11/18/20 Order (Dkt. # 285 (sealed)); 12/11/20 Am. Order.) In his second motion for summary judgment, Dr. Cobbs argued that he was immune under the HCQIA from damages for any defamatory statements made in the November 2016 Letter. (Cobbs 2d MSJ at 16-19.) The court found that both Dr. Cobbs's arguments regarding HCQIA immunity (*id.*) and Dr. Delashaw's response (Cobbs 2d MSJ Resp. at 9-12) were lacking and ordered the parties to file supplemental briefs. (*See* 12/11/20 Am. Order at 23.) Specifically, the court ordered the parties to file supplemental briefing "on the question of whether, and to what extent, the HCQIA provides immunity to liability stemming from Dr. Cobbs's statements in the November

2016 Letter.” (*Id.*) After the parties filed their supplemental briefing, Dr. Cobbs moved to strike portions of Dr. Delashaw’s supplemental briefing. (Cobbs Surreply.)

III. ANALYSIS

The court first lays out the applicable legal standard before turning to Dr. Cobbs’s motion to strike and the parties’ substantive arguments.

A. Legal Standard

Summary judgment is appropriate if the evidence viewed in the light most favorable to the non-moving party shows “that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a); *see Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986); *Beaver v. Tarsadia Hotels*, 816 F.3d 1170, 1177 (9th Cir. 2016). A fact is “material” if it might affect the outcome of the case. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A factual dispute is “‘genuine’ only if there is sufficient evidence for a reasonable fact finder to find for the non-moving party.” *Far Out Prods., Inc. v. Oskar*, 247 F.3d 986, 992 (9th Cir. 2001) (citing *Anderson*, 477 U.S. at 248-49).

The moving party bears the initial burden of showing there is no genuine dispute of material fact and that it is entitled to prevail as a matter of law. *Celotex*, 477 U.S. at 323. If the moving party does not bear the ultimate burden of persuasion at trial, it can show the absence of such a dispute in two ways: (1) by producing evidence negating an essential element of the nonmoving party’s case, or (2) by showing that the nonmoving party lacks evidence of an essential element of its claim or defense. *Nissan Fire & Marine Ins. Co. v. Fritz Cos.*, 210 F.3d 1099, 1106 (9th Cir. 2000). If the moving party

1 meets its burden of production, the burden then shifts to the nonmoving party to identify
2 specific facts from which a factfinder could reasonably find in the nonmoving party's
3 favor. *Celotex*, 477 U.S. at 324; *Anderson*, 477 U.S. at 250.

4 **B. Motion to Strike**

5 Dr. Cobbs brings a motion to strike two portions of Dr. Delashaw's supplemental
6 briefing. (Cobbs Surreply.) Specifically, Dr. Cobbs seeks to strike (1) any arguments
7 addressing liability for republication; and (2) Dr. Delashaw's filing of a declaration that
8 included one email from Dr. Cobbs. (Cobbs Surreply at 2-3 (moving to strike portions of
9 Delashaw Suppl Br. and 11/30/20 Farmer Decl. (Dkt. # 291) ("MEC Email").) The court
10 agrees that the first category of material is outside the scope of the court's requested
11 supplemental briefing. Dr. Delashaw presents arguments about liability for republication
12 of the November 2016 Letter. (Delashaw Suppl. Br. § 1.C at 5-6.) This is beyond the
13 scope of the court's narrow directive to file supplemental briefing regarding HCQIA
14 immunity (*see* 12/11/20 Am. Order at 23), and as such, the court will not consider it at
15 this time.

16 The court will, however, consider the evidence included in the 11/30/20 Farmer
17 Declaration, as it is relevant to the question at hand. When ordering the parties to provide
18 additional briefing, the court instructed the parties to present arguments regarding
19 "whether, and to what extent, the HCQIA provides immunity to liability stemming from
20 Dr. Cobbs's statements in the November 2016 Letter." (*Id.* at 23.) Dr. Delashaw has
21 done just that by bringing the court's attention to an email, authored by Dr. Cobbs, that
22 provides evidence of Dr. Cobbs's intended audience when distributing the November

2016 Letter. (*See* 11/30/20 Farmer Decl. (Dkt. # 291).) This is in line with the court's request and goes directly to the potential applicability of the statute Dr. Cobbs seeks to invoke. (*See infra* § III.C.) Dr. Cobbs filed a motion for summary judgment raising the issue of HCQIA liability, as well as a reply and supplemental briefing addressing the same. (*See generally* Cobbs 2d MSJ; Cobbs 2d MSJ Reply; Cobbs Suppl. Br.) The court will not turn a blind eye to relevant evidence because Dr. Cobbs claims he has been ambushed despite having three opportunities to provide the court with his own evidence. The court also will not allow Dr. Cobbs a fourth opportunity to submit evidence.²

Thus, the court grants in part and denies in part Dr. Cobb's motion to strike. The court will not consider Dr. Delashaw's arguments regarding liability for republication at this time. The court will, however, consider the declaration that Dr. Delashaw submitted in support of his arguments in the supplemental briefing.

C. Applicability of the HCQIA

Dr. Cobbs contends that he enjoys immunity from damages for any statements made in the November 2016 Letter under the HCQIA and thus should be granted summary judgment on all claims. (Cobbs Suppl. Br. at 1.) The court finds that while some immunity from damages may exist, it is not absolute. The court first lays out the

² To the extent Dr. Cobbs's motion to strike is based on a lack of parity between the length of the arguments the parties were able to raise in their supplemental briefs, the court finds this argument to be unfounded. The court ordered the parties to submit six pages of additional briefing. (12/11/20 Am. Order at 23.) Dr. Delashaw provided six pages of double-spaced briefing, while Dr. Cobbs provided six pages of single-spaced briefing. (*Compare* Delashaw Suppl. Br., *with* Cobbs Suppl. Br.) The court sees no imbalance in considering Dr. Delashaw's three-page declaration under these circumstances.

relevant portions of the Act before analyzing what damages Dr. Cobbs may be immune from and how Dr. Delashaw may overcome this presumption of immunity.

1. Relevant Portions of the HCQIA

The applicability of the HCQIA turns on whether the recipients of Dr. Cobbs's Letter were members of a professional review body, as defined under the Act. The relevant portion of the HCQIA states that:

Notwithstanding any other provision of law, no person . . . providing information to a professional review body regarding the competence or professional conduct of a physician shall be held, by reason of having provided such information, to be liable in damages under any law of the United States or of any State . . . unless such information is false and the person providing it knew that such information was false.

42 U.S.C. § 11111(a)(2). The Act defines a "professional review body" as

. . . [A] health care entity and the governing body or any committee of a health care entity which conducts professional review activity, and includes any committee of the medical staff of such an entity when assisting the governing body in a professional review activity.

42 U.S.C. § 11151(11). The Act further defines a health care entity to include "a hospital that is licensed to provide health care services by the State in which it is located." 42 U.S.C. § 11151(4)(A).

At the outset, the court finds that the plain meaning of the Act demonstrates that Dr. Cobbs's assertion that the HCQIA entitles him to summary judgment on all claims is overbroad. The Act only provides immunity from liability for damages. 42 U.S.C. § 11111(a)(2). Dr. Delashaw seeks both damages and equitable relief from Dr. Cobbs. (Am. Compl. Prayer for Relief ¶ 2 (seeking an order "enjoining Dr. Cobbs from making

1 false statements about Dr. Delashaw”).) Thus, even if Dr. Cobbs is immune for all
 2 damages under the HCQIA, it would not dispose of all Dr. Delashaw’s claims.

3 2. Recipients of the November 2016 Letter

4 Turning to the question of damages, the court does not find that Dr. Cobbs is
 5 immune for all potential damages—only those tied to specific recipients of the Letter that
 6 constitute members of a professional review body. Dr. Delashaw argues that Dr. Cobbs
 7 cannot establish that all the recipients constitute a member of a “professional review
 8 body” as defined by the HCQIA.³ (Cobbs MSJ Resp. at 10-12; Delashaw Suppl. Br. at
 9 1-4.) Dr. Cobbs argues that the HCQIA provides immunity because the Swedish
 10 recipients fall into two categories. First, the November 4, 2016, recipients of the
 11 November 2016 Letter: Mr. Armada, Ms. Altaras, and Mr. Hochman, are corporate
 12 officers of Swedish and thus “personify the ‘health care entity’ and its ‘governing body.’”
 13 (Cobbs Suppl. Br. at 3 (quoting 42 U.S.C. §§ 11151(4)(A), (11)).) Second, the
 14 November 17 recipients of the Letter—Dr. Hutchinson and other Swedish employees—
 15 constitute members of Swedish’s MEC, and thus are part of a “professional review
 16 body.” (*Id.*; Cobbs 2d MSJ Reply at 8 n.5 (asserting that all recipients of Letter on
 17 November 17 were MEC members).) The court addresses each group of recipients in
 18 turn.

19
 20 ³ Dr. Delashaw does not contest that the November 2016 Letter contains the type of
 21 “information” that is protected under the Act. (*See* Cobbs 2d MSJ Resp. at 9-12; *see generally*
 22 Delashaw Suppl. Br; *see also* *Bryan v. James E. Holmes Reg’l Med. Ctr.*, 33 F.3d 1318, 1324
 (11th Cir. 1994) (affirming grant of immunity under the HCQIA when a doctor who was
 “generally considered to be a skilled surgeon” was removed in part due to perception he was
 “volcanic-tempered perfectionist” and “difficult man to work with”))

1 a. *Corporate Officers*

2 Dr. Cobbs contends that, because one can only communicate with a corporate
3 entity through its officers and directors, one can only “provid[e] information” to a “health
4 care entity” as contemplated by the Act by providing information to the individuals who
5 run that corporate entity. (Cobbs Suppl. Br. at 3.) While the court offers no opinion on
6 Dr. Cobbs’s argument that this is only way to communicate with a health care entity
7 under the HCQIA, it agrees that information provided to corporate officers should be
8 viewed as information provided to a health care entity under the Act. *See Bryan* 33 F.3d
9 at 1324, 1334 (11th Cir. 1994) (finding members of hospital board of directors to be
10 included in HCQIA’s definition of health care entity); *Talwar v. Mercer Cty. Joint Twp.*
11 *Cnty. Hosp.*, 520 F. Supp. 2d 894, 899 (N.D. Ohio 2007) (same). Dr. Delashaw does not
12 appear to contest that Mr. Armada, Ms. Altaras, Dr. Hochman, and Dr. Pascualy were
13 corporate officers with the ability to direct Swedish. (See Cobbs 1st MSJ Resp. (Dkt.
14 # 140) at 14 (referring to Letter as being sent to “Swedish CEO Tony Armada,
15 Providence CEO Rod Hochman, and CEO of Swedish Seattle June Altaras”); 7/27/20
16 Pratt Decl., ¶ 25, Ex. 24 (submitting email to court that refers to Dr. Pascualy as Chief
17 Executive of Swedish Medical Group).) A health care entity is defined to be a
18 professional review body under the Act, and these four individuals were corporate
19 officers with control over the health care entity of Swedish. Thus, when Dr. Cobbs
20 shared the November 2016 Letter with these individuals, he was providing information to
21 a professional review body as defined by the HCQIA.

22 //

1 ***b. MEC Members***

2 Dr. Delashaw does not dispute that MEC members are members of a professional
3 review body under the HCQIA, but instead contends that Dr. Cobbs has only established
4 that Dr. Hutchinson is a member of the MEC. (*See* Delashaw Suppl. Br. at 4.) In his
5 reply brief, Dr. Cobbs argued that the 16 other individuals who received the email were
6 members of Swedish’s MEC. (Cobbs 2d MSJ Reply at 8 (“***These were the MEC***
7 ***members.***”) (emphasis and bolding in original); *but see id.* at 8 n.5 (“At least, these were
8 the MEC members as communicated to [Dr.] Cobbs by Swedish’s CMO.”) (citing
9 Pascualy Texts at 10-12).)

10 But Dr. Cobbs’s own evidence belies his representation. The text message
11 exchange makes it clear that Dr. Cobbs did not believe this list of names comprised the
12 MEC, but instead considered them to be members of the SMG Executive Council. (*See*
13 Pascualy Texts at 10-12 (showing that Dr. Cobbs was awaiting the list of SMG executive
14 counsel names when Dr. Pascualy responded with the list of names and emails that are
15 cc’d on the Hutchinson Email).) This is bolstered by the fact that Dr. Cobbs emailed Dr.
16 Gwinn Ryder 13 hours before he sent the Hutchinson Email that stated “[t]hese are
17 MEC,” followed by a list of names, only two of which appear on the list Dr. Cobbs is
18 now contending to be the MEC: Peggy Hutchinson and Michael Myint. (*Compare*
19 11/30/20 Farmer Decl., Ex. 1 (“MEC Email”), *with* Hutchinson Email.) Thus, the court
20 determines that Dr. Hutchinson and Michael Myint⁴ were members of the MEC at the

21 _____
22 ⁴ While Dr. Delashaw argues that Dr. Hutchinson is the only MEC member listed on the
Hutchinson Email, he does not appear to dispute the accuracy of the list of MEC names that he

time of the Hutchinson email and constitute members of a professional review body under the HCQIA. Dr. Cobbs has made no arguments and submitted no evidence suggesting that the SMG executive council is a professional review body. (*See generally* Cobbs 2d MSJ; Cobbs 2d MSJ Reply; Cobbs Suppl. Br.) Thus, viewing the evidence in the light most favorable to Dr. Delashaw, Dr. Cobbs has failed to demonstrate that the remaining 15 recipients of the email were members of a professional review body. Dr. Cobbs has also failed to demonstrate that HCQIA immunity applies to any other recipients of the November 2016 Letter besides Mr. Armada, Ms. Alataras, Dr. Hochman, Dr. Pascualy, Dr. Hutchinson, and Mr. Myint.⁵

3. The Falsity Exception

The HCQIA does not provide immunity in all instances where information is provided to members of a professional review body. If the information is false and the provider knew it was false, there is no immunity even if the recipient is a member of a professional review body. 42 U.S.C. § 11111(a)(2). The court has previously determined that five out of seven categories of Dr. Cobbs's allegedly defamatory statements in the November 2016 Letter were not made with a reckless disregard for truth. (*See* 6/11/20

submitted in support of his arguments. (*See generally* Delashaw Suppl. Br.; MEC Email.) Since Michael Myint appears on both lists (*see* MEC Email), the court determines there is no genuine dispute of material fact as to Michael Myint's position on the MEC.

⁵ Dr. Cobbs argues in his supplemental brief that, while HCQIA immunity does not apply to Dr. Cobbs's sending of the Letter to Dr. Newell, Dr. Delashaw cannot establish all the elements of a defamation claim for that publication. (Cobbs Suppl. Br. at 3 n.5.) The court will not address this argument, raised in a footnote in supplemental briefing on the narrow issue of HCQIA immunity. (*Cf.* Cobbs Surreply (moving to strike arguments made in supplemental briefing because they did not squarely address HCQIA immunity).)

1 MSJ Order at 60-66.) Since knowledge of falsity is a higher standard than reckless
2 disregard for truth, the court finds that Dr. Cobbs is immune from any damages stemming
3 from those five categories of statements made to the professional review body members.
4 The court determined that only Dr. Cobbs's statements regarding (1) SNI surgeons'
5 unanimous opposition to Dr. Delashaw and (2) Dr. Delashaw causing mass personnel
6 departures would survive summary judgment under a reckless disregard for truth
7 standard. (*Id.*) Viewing the evidence in the light most favorable to Dr. Delashaw, the
8 court determines there is a genuine dispute of material fact as to the falsity of these
9 categories of statements and Dr. Cobbs's knowledge of their falsity. Thus, Dr. Cobbs
10 will not enjoy immunity from these two categories of statements if Dr. Delashaw is able
11 to demonstrate that they are false and that Dr. Cobbs knew they were false when he made
12 them.

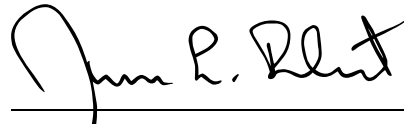
13 In summary, the court finds that six recipients of the November 2016 Letter
14 constitute members of a professional review body under the HCQIA: corporate officers
15 Mr. Armada, Ms. Alataras, Dr. Hochman, Dr. Pascualy; and MEC members Dr.
16 Hutchinson and Mr. Myint. Thus, Dr. Cobbs can only be found liable for damages
17 resulting from the publication of the Letter to these individuals if the statements he made
18 to them were false and Dr. Cobbs knew they were false at the time of publication. Only
19 two categories of allegedly defamatory statements—those regarding unanimous
20 opposition to Dr. Delashaw and Dr. Delashaw causing mass departures—are potentially
21 subject to this falsity exception to immunity. To the extent immunity exists, it applies to
22 liability for damages caused by the protected statements in all claims against Dr. Cobbs,

1 not just the defamation claim. *See* 42 U.S.C. § 11111(a)(2) (providing immunity for
2 liability “under any law of the United States or of any State”). However, the court finds
3 that there is a genuine dispute of material fact as to the HCQIA’s applicability to the
4 remaining recipients of the November 2016 Letter, and no immunity for statements made
5 to these individuals exists at this time. Therefore, the portion of Dr. Cobbs’s second
6 motion for summary judgment that remains after the court’s November 18, 2020 order is
7 granted in part and denied in part.

8 IV. CONCLUSION

9 For the foregoing reasons, the court GRANTS in part and DENIES in part both
10 Dr. Cobbs’s motion to strike (Dkt. # 296) and the remaining portion of Dr. Cobbs’s
11 second motion for summary judgment (Dkt. ## 185 (redacted); 188 (sealed)).

12 Dated this 7th day of January, 2021.

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15 JAMES L. ROBART
16 United States District Judge
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