IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

I-MAB BIOPHARMA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 22-276-CJB
	)	
INHIBRX, INC. and BRENDAN ECKELMAN,	)	
	)	
	)	
Defendants.	)	

Rodger D. Smith II and Anthony D. Raucci, MORRIS, NICHOLS, ARSHT & TUNNELL LLP, Wilmington, DE; Ching-Lee Fukuda, Tai-Heng Cheng and Timothy Q. Li, SIDLEY AUSTIN LLP, New York, NY; Erik B. Fountain, SIDLEY AUSTIN LLP, Dallas, TX, Attorneys for Plaintiff.

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MEMORANDUM OPINION

August 8, 2022
Wilmington, Delaware

Christopher J. Burke
BURKE, United States Magistrate Judge

In this case, Plaintiff I-Mab Biopharma ("I-Mab" or "Plaintiff") brings trade secret misappropriation claims against Defendants Inhibrx, Inc. ("Inhibrx") and Brendan Eckelman ("Dr. Eckelman, and collectively with Inhibrx, "Defendants"). Pending before the Court is Defendants' motion to dismiss the operative First Amended Complaint ("FAC"), filed pursuant to the doctrine of *forum non conveniens* and Federal Rules of Civil Procedure 12(b)(1), 12(b)(2) and 12(b)(6) (the "motion"). (D.I. 61) For the reasons set forth below, the Court will hold in abeyance the *forum non conveniens* portion of Defendants' motion pending an evidentiary hearing, and the Court DENIES the remainder of Defendants' motion.

I. BACKGROUND

A. Factual Background

I-Mab is a clinical-stage biopharmaceutical company that was founded in 2016; it is focused on the discovery, development and commercialization of innovative molecules for treating diseases such as cancer and autoimmune disorders. (D.I. 49 at ¶ 10) I-Mab is a Cayman Islands corporation with its principal place of business in China. (*Id.* at ¶ 2)

Inhibrx is a Delaware corporation with its principal place of business in California. (*Id.* at ¶ 3) Dr. Eckelman is Inhibrx's Co-Founder, Chief Scientific Officer and Executive Vice President of Corporate Strategy. (*Id.* at ¶ 4)

I-Mab and Inhibrx are alleged to be competitors in the pre-clinical and clinical-stage development of bispecific antibody ("BsAb") drugs. (*Id.* at ¶¶ 17, 80) Currently, both companies are developing treatments for cancer that share the same molecular targets. (*Id.* at ¶¶ 18-19) For example, both I-Mab and Inhibrx are developing bispecific antibodies designed to

treat cancer that share the same pair of molecular targets (PD-L1 and 4-1BB); I-Mab's molecule is TJ-L14B ("L14B") and Inhibrx's molecule is INBRX-105. (*Id.* at ¶¶ 19, 84)[1]

In 2018, I-Mab and Tracon Pharmaceuticals, Inc. ("Tracon"), a contract research organization, entered into two agreements relating to United States clinical trials for I-Mab's TJD5 drug. (*Id.* at ¶ 23) I-Mab subsequently provided Tracon with access to its trade secrets to enable Tracon to conduct clinical research pursuant to their collaboration. (*Id.* at ¶¶ 23-24) The relationship eventually deteriorated, resulting in litigation in the Delaware Court of Chancery ("Court of Chancery"), *I-Mab v. TRACON Pharms., Inc.*, C.A. No. 2021-0176-PAF (the "Chancery Action") and arbitration in the International Chamber of Commerce ("ICC"). (*Id.* at ¶ 25; *see also* D.I. 62, ex. A at 1) I-Mab and Tracon submitted a Stipulation and Proposed Order Governing the Production and Exchange of Confidential and Highly Confidential Information (the "Confidentiality Order") in the Chancery Action, which the Court of Chancery subsequently so ordered. (D.I. 62, ex. A)[2] The Confidentiality Order also governs the arbitration proceeding. (D.I. 49 at ¶ 25) The Confidentiality Order permits I-Mab and Tracon to supply confidential discovery material to experts and consultants, provided that such expert or consultant "is not currently an employee of . . . any competitor . . . of [I-Mab or Tracon], as far as the expert or consultant can reasonably determine." (*Id.* (internal quotation marks omitted); D.I. 62, ex. A at ¶

[1] Prior to I-Mab's development of L14B, I-Mab and Inhibrx considered becoming partners to collaborate on Inhibrx's INBRX-105 molecule, but ultimately decided against joining forces. (D.I. 49 at ¶ 82)

[2] The Confidentiality Order, which Defendants attached as an exhibit to their opening brief, is cited in this opinion, as it is integral to the FAC and referenced therein. *See In re Burlington Coat Factory Secs. Litig.*, 114 F.3d 1410, 1426 (3d Cir. 1997). Moreover, in considering a motion to dismiss based on *forum non conveniens* grounds, a court may consider matters outside the pleadings. *See, e.g.*, *Usme v. CMI Leisure Mgmt., Inc.*, Case No.: 21-21191-CIV-GAYLES, 2022 WL 910336, at *3 (S.D. Fla. Mar. 29, 2022).

8) The Confidentiality Order further emphasizes that "[u]nder no circumstances shall an expert or consultant who is a competitor or an employee of a competitor of a Party . . . be provided access" to confidential discovery material. (D.I. 62, ex. A at ¶ 8) And it defines "[c]ompetitor" as "a person or entity endeavoring to engage in the same or similar line of business, provide the same or similar services, sell the same or similar products, and/or operate in the same markets, as well as any person or entity who are actually engaged in any of these activities." (*Id.*)

Unbeknownst to I-Mab, Dr. Eckelman agreed to serve as a testifying expert for Tracon in the arbitration. (D.I. 49 at ¶¶ 26, 32) In conjunction with being retained as an expert, Dr. Eckelman executed an Agreement to be bound by the Confidentiality Order (the "Undertaking"). (*Id.* at ¶ 27; D.I. 62, ex. B)[3]

In December 2021, Tracon served Dr. Eckelman's expert report. (D.I. 49 at ¶ 32) The report states that Dr. Eckelman reviewed multiple documents that contain I-Mab's proprietary and confidential information. (*Id.* at ¶¶ 26, 98-105) Upon discovering that Dr. Eckelman was Tracon's expert, I-Mab informed Tracon that Dr. Eckelman was employed by a direct competitor of I-Mab and requested that Tracon identify all I-Mab confidential information that Tracon provided to Dr. Eckelman. (*Id.* at ¶ 32) I-Mab alleges that Tracon was not cooperative in responding to this request. (*Id.* at ¶¶ 33, 36)

[redacted] (*Id.* at ¶ 34) [redacted]

[3] The Undertaking, which Defendants attached as an exhibit to their opening brief, is cited herein; it too is integral to the FAC and referenced therein.

[redacted] (*Id.* at ¶¶ 38-39, 44, 81 (internal quotation marks omitted)) On April 22, 2022, [redacted] (*Id.* at ¶¶ 45, 106) In addition to the documents listed in the Index, Tracon represented that it also provided Dr. Eckelman with access to the [redacted] (*Id.* at ¶ 153; *see also id.* at ¶ 48)

I-Mab alleges that when he signed the Undertaking, Dr. Eckelman knew that he was employed by a direct competitor of I-Mab and was thus prohibited from reviewing I-Mab's confidential information. Nevertheless, I-Mab alleges, Dr. Eckelman intentionally misrepresented to the parties to the arbitration that he was an independent expert, even though he had a central role at Inhibrx (I-Mab's direct competitor)—and that he did so all in order to learn I-Mab's trade secret information. (*Id.* at ¶¶ 94-96) It is alleged that Dr. Eckelman continues to work as Inhibrx's Chief Scientific Officer, (*id.* at ¶ 172), and that he continues to work on bispecific antibodies at Inhibrx that compete with I-Mab's antibodies, (*id.* at ¶ 173).

Additional relevant factual allegations will be discussed below in the appropriate portions of Section II.

B. Procedural History

I-Mab filed this action on March 1, 2022. (D.I. 2) On May 12, 2022, I-Mab filed the operative FAC. (D.I. 49) On May 25, 2022, Defendants filed the instant motion, (D.I. 61), which was fully briefed as of June 15, 2022, (D.I. 76). On July 7, 2022, the parties filed a joint notice of consent to the Court's jurisdiction to conduct all proceedings in this case, including trial, the entry of final judgment and all post-trial proceedings. (D.I. 89)

II. DISCUSSION

I-Mab's FAC contains two causes of action, both for trade secret misappropriation against both Defendants: Count I, which alleges a violation of the federal Defend Trade Secrets Act ("DTSA"), and Count II, which alleges a violation of the Delaware Uniform Trade Secrets Act ("DUTSA"). (D.I. 49 at ¶¶ 175-201) Defendants' motion presents three attacks with respect to I-Mab's claims: (1) I-Mab's claims must be brought in the Court of Chancery; (2) Dr. Eckelman is not subject to personal jurisdiction in this Court; and (3) I-Mab has failed to properly plead its claims. The Court will address these challenges in turn below.

A. *Forum Non Conveniens*/Forum-selection Clause

Defendants first argue that the claims should be dismissed because, pursuant to the forum-selection clause of the Confidentiality Order, this action must be brought in the Court of Chancery. (D.I. 62 at 6-10) That clause provides that, *inter alia*:

> Each of the parties and other persons receiving Discovery Material pursuant to this Stipulation (a) irrevocably submits to the personal jurisdiction of any state or federal court sitting in the state of Delaware, as well as to the jurisdiction of all courts to which an appeal may be taken from such courts, in any suit, action, or proceeding arising out of or relating to this Stipulation, (b) agrees that all claims in respect of such suit, action, or proceeding shall be brought, heard, and determined exclusively in the Delaware Court of Chancery (provided that, in the event that subject matter jurisdiction is unavailable in that court, then all such claims shall be brought, heard, and determined exclusively in any other state or federal court sitting in the state of Delaware) . . . (d) agrees not to bring any suit, action, or proceeding arising out of or relating to this Stipulation in any other court, and (e) expressly waives, and agrees not to plead or to make, any claim that any such suit, action, or proceeding is subject (in whole or in part) to a jury trial.

(*Id.*, ex. A at ¶ 30)

"[T]he appropriate way to enforce a forum-selection clause pointing to a state or foreign forum is through the doctrine of *forum non conveniens*." *Atl. Marine Const. Co. v. U.S. Distr.*

Ct. for W. Dist. of Texas, 571 U.S. 49, 60 (2013); *see also AGB Contemporary A.G. v. Artemundi LLC*, CIVIL ACTION NO. 20-1689, 2021 WL 1929356, at *7 (D. Del. May 13, 2021). Before engaging in the *forum non conveniens* analysis, a Court must consider whether the forum-selection clause: (1) is enforceable; and (2) applies to the claim(s) at issue. *AGB Contemporary*, 2021 WL 1929356, at *7. Thereafter, a court should consider a number of factors when assessing the doctrine of *forum non conveniens*; certain of these factors are not applicable if the forum-selection clause is enforceable and applies to the claims at issue. *Id*. at *9.[4]

In its briefing, I-Mab does not address whether the forum-selection clause is enforceable generally or applies to the claims at issue, nor does it address the *forum non conveniens* factors. (D.I. 69 at 11-14; *see also* D.I. 76 at 1 ("I-Mab does not dispute that the forum[-]selection clause is enforceable, that the asserted claims fall within it, or that the *forum non conveniens* factors favor dismissal. Instead, I-Mab argues that Dr. Eckelman cannot enforce it.")) Instead, I-Mab's primary argument is that Defendants lack standing to enforce the forum-selection clause. (D.I. 69 at 11-14)

In addressing this lack-of-standing argument, the Court will focus on Dr. Eckelman. This is because in reply, Defendants only argue that Dr. Eckelman can enforce the forum-selection clause—and thus, they do not appear to contest that Inhibrx (an entity that was not a party to the

[4] More specifically, the *forum non conveniens* analysis generally considers four factors: "(1) the amount of deference to be afforded to plaintiffs' choice of forum; (2) the availability of an adequate alternative forum where defendants are amenable to process and plaintiffs' claims are cognizable; (3) relevant 'private interest' factors affecting the convenience of the litigants; and (4) relevant 'public interest' factors affecting the convenience of the forum." *Collins on Behalf of Herself v. Mary Kay, Inc.*, 874 F.3d 176, 186 (3d Cir. 2017) (citations omitted). However, if an enforceable forum-selection clause exists that applies to the claim(s) at issue, the first and third factors are not afforded any weight. *Id.* In such circumstances, courts should accordingly only consider the second and fourth factors, and these should overcome a forum-selection clause in only the most "'unusual'" and "'extraordinary'" circumstances. *Id.* (quoting *Atl. Marine*, 571 U.S. at 62, 64).

Chancery Action, and that did not execute any document that relates in any way to the Confidentiality Order) cannot enforce the forum-selection clause. (D.I. 76 at 1 ("Dr. Eckelman can Enforce the Forum Selection Clause.") (emphasis omitted))

A forum-selection clause can generally be enforced by a person or entity that is a party to the agreement that includes such a clause. *See Baker v. Impact Holding, Inc.*, Civil Action No. 4960-VCP, 2010 WL 1931032, at *3 (Del. Ch. May 13, 2010); *see also Wildfire Prods., L.P. v. Team Lemieux LLC*, C.A. No. 2021-1072-PAF, 2022 WL 2342335, at *9 (Del. Ch. June 29, 2022) ("As a general rule, only the formal parties to a contract are bound by its terms.") (internal quotation marks and citation omitted).[5] Additionally, under Delaware law, a non-party may enforce a forum-selection clause if the non-party is a third party beneficiary of the relevant agreement. *See Bonanno v. VTB Holdings, Inc.* C.A. No. 10681-VCN, 2016 WL 614412, at *7 (Del. Ch. Feb. 8, 2016).[6]

[5] The parties did not explicitly address whether state or federal law applies to Defendants' *forum non conveniens*-related arguments. In their briefs, both sides cite to cases from the federal courts as well as from Delaware state courts in support of their positions. (D.I. 69 at 11-12; D.I. 76 at 2-3) The United States Court of Appeals for the Third Circuit has explained that a court should utilize state law in assessing this issue (unless the parties have agreed otherwise). *In re McGraw-Hill Global Educ. Holdings LLC*, 909 F.3d 48, 58-59 (3d Cir. 2018) ("Our case law directs us to use state law to determine the scope of a forum selection clause—that is, whether the claims and parties involved in the suit are subject to the clause.") (internal quotation marks and citations omitted). Thus, the Court will apply Delaware law (as it has been applied by both Delaware state courts and federal courts) to this issue, just as the parties often do in their briefing.

[6] Under Delaware law, a non-party may also enforce a forum selection clause if the non-party is "closely related to one of the signatories such that the non-party's enforcement of the clause is foreseeable by virtue of the relationship between the signatory and the party sought to be bound." *Mack v. Rev. Worldwide, Inc.*, C.A. No. 2019-0123-MTZ, 2020 WL 7774604, at *17 n.135 (Del. Ch. Dec. 30, 2020) (*quoting Ashall Homes Ltd. v. ROK Entm't Grp. Inc.*, 992 A.2d 1239, 1249 (Del. Ch. 2010)). A non-signatory is considered to be "closely related" provided that: (1) the party receives a direct benefit from the agreement; or (2) it was foreseeable that the party would be bound by the agreement. *Id.* However, Defendants do not

In addressing the dispute over whether Dr. Eckelman has standing to enforce the forum-selection clause here, the parties raise two distinct issues. First, they dispute whether Dr. Eckelman was a party to the Confidentiality Order. And second, if he was not, they disagree over whether he was an intended third-party beneficiary of the Confidentiality Order. (D.I. 69 at 13-14; D.I. 76 at 2-4)

For the Court, however, the difficulty here is that the answer to both of these key questions appears to turn on the resolution of a disputed factual issue: that is, whether Dr. Eckelman was employed by a competitor of I-Mab at the time he signed the Undertaking.

For example, although Dr. Eckelman was not a signatory to the Confidentiality Order when it was submitted by agreement to the Tribunal on March 31, 2021, in some circumstances, a person who subsequently signs a joinder to an agreement (like Dr. Eckelman did when he signed the Undertaking here) could be considered to be a party to the underlying agreement. *See AlixPartners, LLP v. Mori*, C.A. No. 2019-0392-KSJM, 2019 WL 6327325, at *11 (Del. Ch. Nov. 26, 2019) ("Individuals often become parties to agreements by signing joinders to those agreements . . . . This Court declines to hold that forum[-]selection clauses in every such agreement are categorically invalid and unenforceable for want of free negotiation"); *see also Capital Grp. Cos., Inc. v. Armour*, No. Civ.A. 422-N, 2004 WL 2521295, at *2-3 (Del. Ch. Oct. 29, 2004) (considering trustees' execution of a joinder agreement by which they agreed to be bound by a stock restriction agreement, and finding that the forum-selection clause in the stock restriction agreement was valid). That said, pursuant to Delaware law, a valid contract requires proof that the parties mutually assented to all essential terms. *See Green v. Wisneski*, C.A. No.

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rely on the "closely related" test in arguing that Dr. Eckelman has standing to enforce the forum-selection clause. (D.I. 76 at 1-4)

11817-MM, 2021 WL 4999348, at *2 (Del. Ch. Oct. 15, 2021). And here, I-Mab is arguing that because the Confidentiality Order was only ever intended to apply to experts who were not competitors of I-Mab, then I-Mab certainly did not intend to enter into an agreement with Dr. Eckelman—because Dr. Eckelman was in fact employed by a competitor of I-Mab at the relevant time. (D.I. 69 at 13)

Similarly, the question of whether a non-signatory qualifies as a third party beneficiary to a contract hinges on whether "the contract was made for the benefit of that third party within the intent and contemplation of the contracting parties." *Hadley v. Shaffer*, No. Civ.A. 99-144-JJF, 2003 WL 21960406, at *5 (D. Del. Aug. 12, 2003) (also noting that to determine whether the parties intended to make an individual a third party beneficiary, a court must look to the terms of the contract and the surrounding circumstances) (internal quotation marks and citations omitted). And here again, I-Mab's whole argument is that "[it] and Tracon specifically intended to exclude competitors like Dr. Eckelman" from being experts who would gain access to confidential information under the Confidentiality Order. (D.I. 69 at 13)

And yet the issue of whether Dr. Eckelman was (and is), in fact, employed by a competitor of I-Mab is still a hotly disputed question in this case. In the FAC, I-Mab certainly alleges that he was (and is). (*See, e.g.*, D.I. 49 at ¶¶ 34, 90) But Defendants claim that Dr. Eckelman was (and is) not employed by a competitor. (D.I. 72 at 2 ("But whether Dr. Eckelman was a 'competitor' is the key disputed issue in this case."); *id*. at 5; *see also* D.I. 62 at 17)

This raises a question that the parties did not address in detail in their briefing, but that in the Court's view, is very important here. That is, what rule—and more importantly, what procedures—should the Court use to resolve the parties' key factual dispute in deciding this *forum non conveniens*/forum-selection clause issue?

In their briefing (in a footnote), Defendants say that Rule 12(b)(1) applies to the *forum non conveniens* aspect of their motion. (D.I. 62 at 7 n.4) I-Mab does not seem to disagree.

The Court notes, however, that it is not exactly clear under the law which (if any) of the Federal Rules of Civil Procedure apply to a *forum non conveniens* analysis. *See, e.g.*, *Whirlpool Corp. v. Cabri*, Civil Action No. 21-cv-00979EJW, 2022 WL 1421126, at *5 n.8 (D. Del. May 5, 2022); *Monroe Staffing Servs., LLC v. Whitaker*, 20-CV-1716 (GBD) (BCM), 2022 WL 684714, at *5 n.3 (S.D.N.Y. Mar. 7, 2022); *Lee v. Dubose Nat'l Energy Servs., Inc.*, CIVIL ACTION NO. 18-2504, 2019 WL 1897164, at *1 (E.D.Pa. Apr. 29, 2019); *Prod. Res. Grp., L.L.C. v. Martin Prof'l, A/S*, 907 F. Supp. 2d 401, 406-07 (S.D.N.Y. 2012). What does seem clear, however, is that when it comes to resolving a motion to dismiss relating to the doctrine of *forum non conveniens*, while the court may rely on the pleadings and affidavits filed in connection with the motion, if a material dispute of fact exists between the parties—and if resolution of that dispute would turn the tide one way or the other with respect to whether a forum-selection clause applies—then the Court cannot resolve such a fact in the movant's favor without holding an evidentiary hearing. *See, e.g.*, *Knowyourmeme.com Network v. Nizri*, 20-CV-9869 (GBD) (JLC), 2021 WL 3855490, at *6 (S.D.N.Y. Aug. 30, 2021); *AMA Multimedia LLC v. Sagan Ltd.*, No. CV-16-01269-PHX-DGC, 2020 WL 4284364, at *2 n.3 (D. Ariz. July 27, 2020); *T & M Solar & Air Conditioning, Inc. v. Lennox Int'l Inc.*, 83 F. Supp. 3d 855, 870–71 (N.D. Cal. 2015); *Allianz Glob. Corp. & Specialty v. Chiswick Bridge*, Nos. 13-cv-7559-RA, 13-cv-7565-RA, 2014 WL 6469027, at *2 (S.D.N.Y. Nov. 17, 2014). This makes sense, as it would seem neither fair nor legally correct to resolve this key issue about competitor status (which would, in turn, likely decide the *forum non conveniens*/forum-selection clause dispute with finality) by simply

accepting I-Mab's allegations (i.e., that Dr. Eckelman was and is a competitor) as true—when those allegations are actually hotly disputed.[7]

For these reasons, the Court concludes that it must hold an evidentiary hearing, as only after appropriately resolving this key dispute about competitor status can the Court decide this portion of Defendants' motion. Accordingly, by no later than 10 days from the date of this Opinion, the parties shall provide the Court with a joint status report of no longer than three single-spaced pages that sets out the parties' position(s) regarding when the hearing should be held and what steps, if any, need to be taken leading up to the hearing.[8]

B. Personal Jurisdiction

[7] The Court recognizes that this key disputed "competition" issue also seems to lie at the heart of the merits dispute in this case (in that I-Mab claims that Dr. Eckelman knowingly misrepresented his status as I-Mab's competitor in order to gain access to its trade secrets). Even so, courts have noted that sometimes they may have to make conclusions regarding an issue relevant to the merits when they are resolving threshold issues in a case. *Cf. Spring Pharms., LLC v. Retrophin, Inc.*, CIVIL ACTION NO. 18-4553, 2019 WL 6769988, at *2 (E.D. Pa. Dec. 11, 2019) (noting that, in the Rule 12(b)(1) subject matter jurisdiction context, "if there are disputes of material facts, [c]ourts in this jurisdiction must permit the case to proceed to a plenary trial on the contested issues so that it may resolve the question of its jurisdiction even while hearing proofs that are equally pertinent to the merits") (internal quotation marks and citation omitted).

[8] The parties also addressed a related issue raised by I-Mab—that in agreeing to the terms of the Confidentiality Order, I-Mab did not waive its constitutional right to a jury trial (which it could not obtain in the Court of Chancery) with respect to trade secret misappropriation claims against a direct competitor. (D.I. 69 at 2, 9-11) A litigant may waive its constitutional right to a jury trial in a civil case. *Miller v. Sun Capital Partners, Inc.*, Civil Action No. 13-1996-RGA, 2016 WL 4941989, at *5 (D. Del. Sept. 15, 2016). However, because "the right of [a] jury trial is fundamental, courts indulge every reasonable presumption against waiver." *Aetna Ins. Co. v. Kennedy to Use of Bogash*, 301 U.S. 389, 393 (1937). To be enforceable, a jury waiver must be made knowingly and voluntarily based on the facts of the case. *Miller*, 2016 WL 4941989, at *5. In the Court's view, this issue is largely subsumed by the standing issue discussed above, because it turns on the question of whether Dr. Eckelman is a proper party to the Confidentiality Order. If so, then it would seem to be clear that I-Mab has agreed to proceed with its claims in the Court of Chancery with no jury trial. (D.I. 62, ex. A at ¶ 30)

Defendants also contend that this Court lacks personal jurisdiction over Dr. Eckelman as an additional reason why I-Mab's claims must be dismissed. (D.I. 62 at 10-12; D.I. 76 at 5-7) Dr. Eckelman is a resident of California. (D.I. 25 at ¶ 2) He does not have a residence in Delaware, and his testimony in the arbitration took place in Washington D.C. (*Id.* at ¶¶ 6-7)

Rule 12(b)(2) directs courts to dismiss a case when the court lacks personal jurisdiction over the defendant.[9] When a defendant moves to dismiss a lawsuit for lack of personal jurisdiction, the plaintiff bears the burden of showing the basis for jurisdiction. *Power Integrations, Inc. v. BCD Semiconductor Corp.*, 547 F. Supp. 2d 365, 369 (D. Del. 2008). In a case like this one, where a district court has not held an evidentiary hearing, the plaintiff must simply make out a *prima facie* showing that personal jurisdiction exists. *See Perlight Solar Co., Ltd. v. Perlight Sales N. Am. LL*, C.A. No. 14-331-LPS, 2015 WL 5544966, at *2 (D. Del. Sept. 18, 2015). All factual inferences to be drawn from the pleadings, affidavits and exhibits must be drawn in the plaintiff's favor at this stage. *Power Integrations*, 547 F. Supp. 2d at 369.

I-Mab's makes two arguments as to why it has made a *prima facie* showing that personal jurisdiction exists, but the Court need consider only one of those here. That is I-Mab's argument that Delaware's officer consent statute, Del. Code tit. 10, § 3114(b), confers personal jurisdiction over Dr. Eckelman. (D.I. 69 at 7-8) That statute provides that Delaware courts may

[9] Typically, in determining whether it can exercise personal jurisdiction over a defendant, a court employs a two-part test: (1) it analyzes the long-arm statue of the state in which it is located; and (2) it determines whether exercising jurisdiction over the defendant would comport with the Due Process Clause of the U.S. Constitution. *Perlight Solar Co., Ltd. v. Perlight Sales N. Am. LL*, C.A. No. 14-331-LPS, 2015 WL 5544966, at *2 (D. Del. Sept. 18, 2015). That said, when a party is bound by a forum selection clause, it is deemed to have consented to personal jurisdiction in the chosen forum through agreement to the inclusion of the clause in the contract at issue. *See Hardwire, LLC v. Zero Int'l, Inc*., Civil Action No. 14-54-LPS-CJB, 2014 WL 5144610, at *6 (D. Del. Oct. 14, 2014). In such a case, a minimum contacts analysis pursuant to the Delaware long-arm statute and the Due Process Clause is not required. *Id.*

exercise personal jurisdiction over nonresident officers of a corporation in "all civil actions or proceedings brought in this State, by or on behalf of, or against such corporation, in which such officer is a necessary or proper party[.]." Del. Code tit. 10, § 3114(b). The Supreme Court of Delaware has explained that the officer consent statute "only applies when a director or officer faces claims that arise out of his exercise of corporate powers" and where the director "has a legal interest in the dispute that is separate from [the corporation's] interest." *Hazout v. Tsang Mun Ting*, 134 A.3d 274, 278-79 (Del. 2016). According to I-Mab, Dr. Eckelman is a proper party here because: (1) he is independently liable for his conduct; (2) I-Mab's claims against him arise out of the same facts and occurrences as the claims against Inhibrx; and (3) he engaged in continued acts of misappropriation in his official role as Inhibrx's Chief Scientific Officer. (D.I. 69 at 7-8)

The parties seem to agree that this issue turns on whether I-Mab has sufficiently demonstrated that Dr. Eckelman was working in his official capacity as a corporate officer of Inhibrx when he committed the alleged acts of misappropriation. (D.I. 69 at 8; D.I. 76 at 6 (Defendants arguing that I-Mab's officer consent statute argument fails "because Dr. Eckelman served as [an] expert in his personal capacity and the claims in the FAC do not implicate his role as an officer of Inhibrx.")); *see also, e.g.*, *Hazout*, 134 A.3d at 278 (finding that the officer consent statute applied where the individual had a legal interest in the dispute that was separate from the corporation's interest, and where all of the claims against the individual arose out of actions taken in his official corporate capacity). As discussed below in Section II.C.2, the Court finds that I-Mab has sufficiently pleaded that Dr. Eckelman engaged in continued acts of misappropriation in his official capacity, in order to benefit Inhibrx. (D.I. 49 at ¶¶ 95, 172-74) And so I-Mab has made out a *prima facie* case of a statutory claim to personal jurisdiction here.

Additionally, the Court concludes that I-Mab has also made out a *prima facie* case that Dr. Eckelman has minimum contacts with the State of Delaware that satisfy the Due Process clause. *See Hazout*, 134 A.3d at 291 (noting that the way to police the concern that applying the officer consent statute would compromise a non-resident fiduciary's due process rights is to apply the statute's terms and then to utilize a Due Process/minimum contacts analysis to ensure that the statute is not used in a situationally inappropriate manner); *see also Turf Nation, Inc. v. UBU Sports, Inc.*, C.A. No.: N17C-01-271- EMD CCLD, 2017 WL 4535970, at *9 (Del. Super. Ct. Oct. 11, 2017). Here, Dr. Eckelman voluntarily participated as an expert in an arbitration proceeding that arose out of a case in the Court of Chancery of the State of Delaware. In doing so, he signed an Undertaking (a document associated with the Chancery Action) that indicated he agreed to be bound by the Confidentiality Order (another document associated with the Chancery Action). And the Confidentiality Order provides that such a signatory submits to the personal jurisdiction of any court in Delaware as to any suit arising out of or relating to that Order. (D.I. 62, ex. A at ¶ 30) The minimum contacts analysis is solely about whether a party, via his own conduct, has purposely created a sufficiently substantial connection with the forum state, such that he should have foreseen that he could be later haled into the courts of that State. *See Asahi Metal Indus. Co. v. Superior Ct. of Cal., Solano Cnty*., 480 U.S. 102, 108-09 (1987). Regardless of whether Dr. Eckelman *should* have signed on as an expert witness (i.e., whether he did so while being employed by a competitor to I-Mab), the fact that he *actually did do so*—and that this case arises out of and relates to that conduct—is enough to support at least a *prima facie* showing that Dr. Eckelman has sufficient minimum contacts with the state of Delaware. *Cf. Golden v. Stein*, 481 F. Supp. 3d 843, 857-58 (S.D. Iowa 2019).

For these reasons, the Court denies Defendants' Rule 12(b)(2) motion.

C. Failure to State a Claim

Defendants also argue that in the FAC, I-Mab fails to state a claim as to its causes of action, such that those claims should be dismissed pursuant to Rule 12(b)(6). (D.I. 62 at 12-20; D.I. 76 at 7-10)

The sufficiency of pleadings for non-fraud claims is governed by Federal Rule of Civil Procedure 8, which requires "a short and plain statement of the claim showing that the pleader is entitled to relief[.]" Fed. R. Civ. P. 8(a)(2). A claim alleging fraud or mistake, however, is subject to the more stringent pleading requirements of Federal Rule of Civil Procedure 9(b), which mandates that the "circumstances constituting fraud or mistake" be "state[d] with particularity[.]" Fed. R. Civ. P. 9(b); *see also Frederico v. Home Depot*, 507 F.3d 188, 200 (3d Cir. 2007).[10]

When presented with a Rule 12(b)(6) motion to dismiss for failure to state a claim, a court conducts a two-part analysis. *Fowler v. UPMC Shadyside*, 578 F.3d 203, 210 (3d Cir. 2009). First, the court separates the factual and legal elements of a claim, accepting "all of the

[10] As noted above, I-Mab's trade secret misappropriation claims are based on Dr. Eckelman's alleged intentional misrepresentations in executing the Undertaking, despite allegedly knowing that he was an employee of I-Mab's competitor. (D.I. 49 at ¶¶ 28, 94-96; *see also* D.I. 62 at 13; D.I. 69 at 15-16) The parties dispute whether I-Mab's claims are subject to the higher pleading standard set out in Rule 9(b). (D.I. 62 at 13; D.I. 69 at 15) None of the Court's conclusions below (i.e., that the FAC plausibly alleges claims against both Defendants) necessarily turns on the answer to this dispute, as the allegations would be sufficient under Rule 8 or Rule 9(b). Nevertheless, the Court notes that if a claim is *actually pleaded* in a manner that "sounds in fraud[,]"—as I-Mab's claims are here—then the claim has to meet Rule 9(b)'s requirements. *Cf. Registered Agent Sols., Inc. v. Corp. Serv. Co.*, No. 1:21-cv-786-SB, 2022 WL 911253, at *2 (D. Del. Mar. 28, 2022) ("Rule 9 ensures that claims of misrepresentation are pleaded in detail.") (internal quotation marks and citation omitted); *King v. Pratt & Whitney Can. Corp.*, Civil Action No. 20-359-LPS-CJB, 2021 WL 663059, at *4 (D. Del. Feb. 19, 2021) ("Plaintiffs were required to plead the negligent misrepresentation claims in a manner that satisfies Rule 9(b)" because the claims were pleaded in a manner that sounded in fraud.).

complaint's well-pleaded facts as true, but [disregarding] any legal conclusions." *Id.* at 210-11. Second, the court determines "whether the facts alleged in the complaint are sufficient to show that the plaintiff has a 'plausible claim for relief.'" *Id.* at 211 (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009)). In assessing the plausibility of a claim, the court must "construe the complaint in the light most favorable to the plaintiff, and determine whether, under any reasonable reading of the complaint, the plaintiff may be entitled to relief." *Id.* at 210 (quoting *Phillips v. Cnty. of Allegheny*, 515 F.3d 224, 233 (3d Cir. 2008)).

Pursuant to Delaware law, there are four elements to a claim for misappropriation of trade secrets: (1) a trade secret exists;[11] (2) the trade secret was communicated to the defendant; (3) the communication was made pursuant to an express or implied understanding that the secrecy of the information would be maintained; and (4) the trade secret has been misappropriated within the meaning of that term as defined in the DUTSA. *Alarm.com Holdings, Inc. v. ABS Cap. Partners Inc.*, C.A. No. 2017-0583-JTL, 2018 WL 3006118, at *6-7 (Del. Ch. June 15, 2018); *Wayman Fire Prot., Inc. v. Premium Fire & Sec., LLC*, C.A. No. 7866-VCP, 2014 WL 897223, at *13 (Del. Ch. Mar. 5, 2014). Similarly, to establish a violation of the DTSA, I-Mab must plead and prove: "(1) the existence of a trade secret, defined generally as information with independent economic value that the owner has taken reasonable measures to keep secret[;] (2) that is related to a product or service used in, or intended for use in, interstate or foreign commerce[,] and (3) the misappropriation of that trade secret[.]" *Oakwood Lab'ys*

[11] Under the DUTSA, a "trade secret" is defined as "information, including a formula, pattern, compilation, program, device, method, technique or process, that: . . . [d]erives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use[and i]s the subject of efforts that are reasonable under the circumstances to maintain its secrecy." Del. Code Ann. tit. 6, § 2001(4).

LLC v. Thanoo, 999 F.3d 892, 905 (3d Cir. 2021) (internal quotation marks and citations omitted). Both the DUTSA and DTSA each provide that one way that a person can misappropriate a trade secret is by acquiring it while knowing that it was acquired through improper means. 18 U.S.C. § 1839(5)(A); Del. Code Ann. tit. 6, § 2001(2)(a). "Improper means," under both statutes, "include[s] theft, bribery, misrepresentation, breach or inducement of a breach of a duty to maintain secrecy, or espionage through electronic or other means." 18 U.S.C. § 1839(6); Del. Code Ann. tit. 6, § 2001(1). Here, I-Mab is alleging that Defendants acquired its trade secrets through misrepresentations. (*See* D.I. 69 at 15-16)

Defendants assert three reasons why I-Mab's claims are insufficiently pleaded. The Court will take them up in turn.

1. Allegations Regarding "Improper Means" as to Dr. Eckelman

First, Defendants argue that the FAC fails to sufficiently allege Dr. Eckelman's state of mind. (D.I. 62 at 15-18; D.I. 76 at 8-9) Defendants' primary argument here is that the FAC does not sufficiently plead that when Dr. Eckelman signed the Undertaking, he *actually knew* that he and Inhibrx were competitors of I-Mab (i.e., the substance of the misrepresentation that is said to amount to Dr. Eckelman's use of improper means to acquire the trade secrets at issue). (*Id.*)[12]

The Court disagrees. The FAC not only alleges that I-Mab and Inhibrx were competitors at the relevant time, but it also sets out facts that plausibly assert that Dr. Eckelman was aware of this competitive status. To that end, the FAC asserts that: (1) at all relevant times, Dr. Eckelman

[12] Defendants additionally argue that I-Mab's allegations should fail because I-Mab "does not even assert that Dr. Eckelman made the alleged misrepresentations in an attempt to obtain I-Mab's trade secrets." (D.I. 62 at 16; *see also* D.I. 76 at 8) But even assuming such an allegation were required, the FAC does assert as much. (D.I. 49 at ¶ 96 ("Dr. Eckelman misrepresented to the parties in the [Confidentiality Order] that he is independent, even though he is an employee of a direct competitor, *to learn . . . Trade Secrets 1-10, about I-Mab's pipeline to gain a competitive advantage for Inhibrx*.") (emphasis added))

held positions at the highest levels at Inhibrx; (2) he "worked directly on INBRX-105 and advanced INBRX-105 from its initial conceptualization stage" and INBRX-105 "competes directly against I-Mab's L14B" in that they "target the same pair of molecular targets, and both [] are in Phase 1 clinical trials, competing for the first-to-market advantage in pharmaceutical therapeutics"; and (3) during Dr. Eckelman's tenure at Inhibrx, Inhibrx and I-Mab "engaged in serious discussions and considered a draft term sheet for collaboration on PD-L1x4-1BB in 2017." (D.I. 49 at ¶¶ 82, 84, 91, 94, 95) The Confidentiality Order defines "[c]ompetitor" in a fairly broad way, as "a person or entity endeavoring to engage in the same or similar line of business, provide the same or similar services, sell the same or similar products, and/or operate in the same markets, as well as any person or entity who are actually engaged in any of these activities." (D.I. 62, ex. A at ¶ 8) While I-Mab's allegations are just that—only allegations—for now they are sufficient to plausibly claim that Dr. Eckelman knew about I-Mab and Inhibrx's status as competitors, and thus had the requisite state of mind to have used improper means to obtain trade secrets.

Thus, the Court concludes that this argument is not a basis for dismissal.

2. Claims Against Inhibrx

Defendants next argue that the FAC does not plead sufficient claims against Inhibrx. (D.I. 62 at 14-15; D.I. 76 at 7-8) As was noted above, one way for I-Mab to prevail on its trade secret claims against Inhibrx is to allege that Inhibrx had knowledge that I-Mab's trade secrets were acquired by improper means. 18 U.S.C. § 1839(5)(A); Del. Code Ann. tit. 6, § 2001(2)(a). The FAC's relevant allegations with respect to Inhibrx regarding this element are as follows:

> 29. Given Dr. Eckelman's central roles as the Co-Founder, Chief Scientific Officer, and Executive VP of Corporate Strategy at Inhibrx, *Dr. Eckelman's knowledge cannot be separated from Inhibrx's knowledge*.

> 30. On information and belief, *Inhibrx became aware* of Dr. Eckelman's engagement as an expert for Tracon, that Dr. Eckelman signed an undertaking affirming his understanding of and compliance with the Confidentiality Order, and that Dr. Eckelman had received I-Mab's confidential information. . . .
>
> 95. . . . Given Dr. Eckelman's central roles at Inhibrx, *his improperly obtained knowledge of I-Mab's trade secrets inevitably became Inhibrx's knowledge*[.]

(D.I. 49 at ¶¶ 29-30, 95 (emphasis added))

Defendants argue that the FAC's allegations are insufficient to support trade secret claims against Inhibrx, since Dr. Eckelman served as an expert witness for Tracon in his "personal capacity" and "there are no facts alleged that indicate Inhibrx knew the terms of the Confidentiality Order or the Undertaking that Dr. Eckelman signed, let alone approved of them." (D.I. 62 at 14-15; *see also* D.I. 76 at 7) Defendants point out that a key allegation about Inhibrx's knowledge of the alleged misappropriation, set out above in paragraph 30 of the FAC, is made on "information and belief." (D.I. 62 at 15) They note that "pleading upon information and belief is permissible [w]here it can be shown that the requisite factual information is peculiarly within the defendant's knowledge or control—[but only] so long as there are no boilerplate and conclusory allegations and [p]laintiffs . . . accompany their legal theory with factual allegations that make their theoretically viable claim plausible." *McDermott v. Clondalkin Grp.*, 649 F. App'x 263, 267-68 (3d Cir. 2016) (internal quotation marks, citations and emphasis omitted) (*cited in* D.I. 62 at 15). And they assert that nowhere in the FAC does I-Mab provide factual allegations that render it plausible that Inhibrx did, in fact, know about Dr. Eckelman's allegedly wrongful conduct. (D.I. 62 at 15)

To that, I-Mab responds by asserting that Inhibrx, *inter alia*, "knew of Dr. Eckelman's misrepresentations" because "given his roles at Inhibrx, Dr. Eckelman's knowledge of I-Mab's

trade secrets cannot reasonably be separated from Inhibrx's knowledge[.]" (D.I. 69 at 17) In other words, I-Mab is arguing that it need not show that *other employees at Inhibrx* knew of Dr. Eckelman's trade secret misappropriation; instead, its position seems to be that Inhibrx is *vicariously liable* for Dr. Eckelman's *own conduct and knowledge*.

The caselaw indicates that in order for I-Mab to plausibly demonstrate that Inhibrx is vicariously liable for Dr. Eckelman's conduct, I-Mab must plead facts showing that Dr. Eckelman's trade secret misappropriation was committed within the scope of his employment. *See, e.g.*, *Navigation Holdings, LLC v. Molavi*, Case No. 19-CV-02644-LHK, 2020 WL 5074307, at *3 (N.D. Cal. Aug. 25, 2020); *EMSI Acquisition, Inc. v. Contrarian Funds, LLC*, C.A. No. 12648-VCS, 2017 WL 1732369, at *13 (Del. Ch. May 3, 2017). And an individual's conduct can be considered within the scope of his employment when it is performed, at least partly, to benefit the employer (even though the employer may forbid it). *Navigation Holdings*, 2020 WL 5074307, at *3; *cf. Am. Bottling Co. v. Repole*, C.A. No. N19C-03-048 AML CCLD, 2020 WL 7787043, at *6 (Del. Super. Ct. Dec. 30, 2020).

Although I-Mab does not seem to be asserting that Dr. Eckelman initially acted in his official capacity, (*see* D.I. 69 at 8), in the Court's view, the FAC's allegations are sufficient to establish that Dr. Eckelman's continued acts of misappropriation were committed within the scope of his employment at Inhibrx. To that end, the FAC alleges that: (1) Dr. Eckelman has "central roles" at Inhibrx, as he is the company's Co-Founder, Chief Scientific Officer and Executive Vice President of Corporate Strategy; (2) Dr. Eckelman has continued to work in these central roles at Inhibrx up through the time of this suit; (3) Inhibrx continues to allow Dr. Eckelman to work in the field of the trade secrets; and (4) Dr. Eckelman continues to use I-Mab's trade secrets in his official capacity to benefit Inhibrx. (D.I. 49 at ¶¶ 4, 95, 172-74)

Accordingly, the Court concludes that the claims against Inhibrx should not be dismissed on this ground.

3. Identifying Alleged Trade Secrets with Requisite Specificity

Lastly, Defendants argue that I-Mab did not sufficiently allege the trade secrets at issue with the requisite specificity. (D.I. 62 at 18-20)[13] On this score, the parties agree that I-Mab was required to identify the trade secrets at issue in the FAC with "sufficient particularity so as to provide notice to a defendant of what he is accused of misappropriating and for a court to determine whether misappropriation has or is threatened to occur." *Lithero, LLC v. AstraZeneca Pharms. LP*, Civil Action No. 19-2320-RGA, 2020 WL 4699041, at *1 (D. Del. Aug. 13, 2020) (internal quotation marks and citation omitted) (*cited in* D.I. 62 at 18); *Flexible Techs., Inc. v. SharkNinja Operating LLC*, Civil Action No. 18-348-CFC, 2019 WL 1417465, at *2 (D. Del. Mar. 29, 2019) (internal quotation marks and citation omitted) (*cited in* D.I. 69 at 17). The disputed issue is whether I-Mab has done so.

In the Court's view, it has. The FAC explains that the alleged trade secrets at issue relate to each of 10 inventive molecules that are in I-Mab's pre-clinical and clinical pipeline. (D.I. 49 at ¶ 59) From there, the FAC provides additional information, on a molecule-by-molecule basis, about the types of "proprietary and confidential data" that are said to make up the trade secrets at issue. (*Id*. at ¶¶ 60-69) With regard to two of the molecules, the information identified seems

[13] For the first time in their reply brief, Defendants added a new argument that was not clearly made in their opening brief about the insufficiency of the allegations regarding the alleged trade secrets at issue. There, Defendants asserted that the claims should be dismissed because I-Mab failed to "allege the reasonable measures [it] took to protect its trade secrets." (D.I. 76 at 10) Because Defendants did not make this argument in their opening brief, they have waived the argument at this stage, and the Court will not address it further. *See, e.g.*, *Sysmex Corp. v. Beckman Coulter, Inc*., Civil Action No. 19-1642-JFB-CJB, 2022 WL 1786526, at *6 (D. Del. May 26, 2022); *Winters v. Colvin*, Civil Action No. 09-460-CJB, 2013 WL 5956246, at *22 n.20 (D. Del. Nov. 7, 2013) (citing cases).

pretty particular—drilling down to a fairly fine level of detail about the data at issue (i.e., identifying the specific agreement in which the data is located, or identifying very specific facts that are said to make up the trade secrets).[14] As to the trade secrets regarding the eight other molecules, even if the FAC is a bit less specific in its description, it does still provide more detail about the particular types of "proprietary and confidential data" that is at issue. The allegations as to "Trade Secret 1" are exemplary in this regard, as there, the relevant data is further described as "CMC data, some potency data, some toxicity data, some pharmacokinetic data, and financial and business data regarding I-Mab's collaborations with I-Mab business partners for L14B[.]" (*Id*. at ¶ 60) Now admittedly, in these paragraphs, the FAC does not then go further and list out the actual "CMC" or "potency" or "pharmacokinetic" or "financial" or "business" data (e.g., specific numerical items) that I-Mab is referencing. (*Id*. at ¶¶ 60-69) But later in the FAC, I-Mab provides more specificity, when it: (1) lists the specific documents that Dr. Eckelman received or reviewed during his work as an expert; and (2) as to a significant number of those documents, on a document-by-document basis, describes which trade secrets (that is, which of Trade Secrets 1-10) are found in each particular document. (*Id*. at ¶¶ 97-105, 111-59) When one takes all of these allegations together, they appear to be sufficiently concrete and detailed so as to put Defendants on notice of the types of trade secrets that are really at issue in this case. *See Progressive Sterilization, LLC v. Turbett Surgical LLC*, Civil Action No. 19-627-CFC, 2020 WL 1849709, at *6 (D. Del. Apr. 13, 2020) (concluding the same, where the alleged trade secrets

[14] (*See* D.I. 49 at ¶ 65 (describing "Trade Secret 6" as "attorney's eyes only and highly confidential business terms regarding I-Mab's License and Collaboration Agreement with AbbVie for TJC4, which is worth up to $1.94 billion in milestones"); *id*. at ¶ 66 (describing "Trade Secret 7," *inter alia*, as including the fact "that I-Mab had the capability to provide comparable levels of data for its TJ-CD4B molecule to Tracon that it provided to Tracon for its L14B and L1A3 molecules as of April 2020 [and the fact that] I-Mab was developing bispecific antibodies using anti-claudin 18.2 sequences and anti-4-1BB sequences"))

were identified by explaining the products they related to ("SCORES units") and by further noting the underlying aspects of those products that were at issue (such as "[m]ethodology for analyzing microbial barrier properties" or "[m]ethodology for verifying sterilization efficacy" or "[i]mprovements to the SCORES transfer cart, including modification of wheel base and improved autoclave docking and transfer cart self-locking features")) (internal quotation marks and citations omitted), *report and recommendation adopted*, 2020 WL 3071951 (D. Del. June 10, 2020); *Flexible Techs., Inc.*, 2019 WL 1417465, at *2 (concluding the same, where the alleged trade secrets, which related to "know-how" regarding self-retracting stretch hoses, were described as including "the composition of [plaintiff's] product, . . . the material texturing of the product, . . . methods of testing and manufacturing to ensure product reliability, . . . and methods to not rely on, know[-]how, and negative information relating to the same, including what kinds of potential modifications to current-carrying hoses would not work") (internal quotation marks and citations omitted).[15]

For the above reasons, the Court concludes that the claims should not be dismissed on this ground either.

III. CONCLUSION

For the foregoing reasons, the Court: (1) will hold in abeyance the *forum non conveniens* portion of Defendants' motion pending an evidentiary hearing; and (2) DENIES the remainder of

[15] In their opening brief, Defendants also asserted that I-Mab did not show that the documents that Dr. Eckelman received were "obtained pursuant to [the] Confidentiality Order, as opposed to another agreement like the BsAb Agreement[,]" which is necessary because I-Mab's misappropriation claim is "based expressly on Dr. Eckelman's purported violation of the Confidentiality Order[.]" (D.I. 62 at 19; *see also* D.I. 49 at ¶ 23 (alleging that in 2017, I-Mab and Tracon entered into the "BsAb Agreement" to permit Tracon to have access to I-Mab's trade secrets in order to further a proposed business collaboration)) But the FAC *does* allege that the trade secrets at issue were obtained pursuant to the Confidentiality Order. (*See, e.g.*, D.I. 49 at ¶ 91)

Defendants' motion.

Because this Memorandum Opinion may contain confidential information, it has been released under seal, pending review by the parties to allow them to submit a single, jointly proposed, redacted version (if necessary) of the Memorandum Opinion. Any such redacted version shall be submitted no later than **August 11, 2022** for review by the Court. It should be accompanied by a motion for redaction that shows that the presumption of public access to judicial records has been rebutted with respect to the proposed redacted material, by including a factually-detailed explanation as to how that material is the "kind of information that courts will protect and that disclosure will work a clearly defined and serious injury to the party seeking closure." *In re Avandia Mktg., Sales Pracs. & Prods. Liab. Litig.*, 924 F.3d 662, 672 (3d Cir. 2019) (internal quotation marks and citation omitted). The Court will subsequently issue a publicly-available version of its Memorandum Opinion.