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,	)	**REDACTED VERSION**
	)	
	)	
Defendants.	)	

MEMORANDUM ORDER

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"). Presently pending before the Court is Defendants' motion to exclude certain opinions offered by Plaintiff's damages expert John R. Bone (the "Motion"). (D.I. 354) I-Mab opposes the Motion. For the reasons set forth below, the Motion is DENIED (with the exception of the portion of the Motion relating to Mr. Bone's probability of success ("POS") related opinion, which the Court will take up when it considers Defendants' motion to exclude the opinions of Dr. Kenneth Grabstein, (D.I. 355)).[1]

I. BACKGROUND

I-Mab commenced this action on March 1, 2022. (D.I. 2) The operative First Amended Complaint ("FAC"), filed on May 12, 2022, 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, and Count II, which alleges a violation of the Delaware Uniform

[1] The parties have jointly consented 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)

Trade Secrets Act. (D.I. 49 at ¶¶ 175-201) Plaintiff asserts that Defendants misappropriated nine trade secrets (that correspond to molecules designed to treat cancer) that are referred to herein as Trade Secret 1, Trade Secret 2, Trade Secret 4, Trade Secret 5, Trade Secret 6, Trade Secret 7, Trade Secret 8, Trade Secret 9 and Trade Secret 10. (*See, e.g.*, *id.* at ¶¶ 50, 59-70; D.I. 337, ex. 6 at 7-23)[2]

Defendants filed the instant Motion on June 14, 2024. (*See* D.I. 336) The Motion was fully briefed as of July 24, 2024. (D.I. 386) Trial is set for October 28, 2024. (D.I. 301 at 2)

The Court here writes primarily for the parties, and so any additional facts relevant to this Memorandum Order will be discussed in Section III below.

II. STANDARD OF REVIEW

The Court has frequently set out the relevant standard of review for assessing a motion, like this one, filed pursuant to Federal Rule of Evidence 702 ("Rule 702") and *Daubert v. Merrell Dow Pharms, Inc.*, 509 U.S. 579 (1993). One such instance came in *Integra LifeScis. Corp. v. HyperBranch Med. Tech., Inc.*, Civil Action No. 15-819-LPS-CJB, 2018 WL 1785033, at *1-2 (D. Del. Apr. 4, 2018). The Court incorporates by reference those legal standards set out in *Integra*, and will follow them herein. To the extent that additional related legal principles regarding Rule 702 and *Daubert* are relevant, the Court will set those out in Section III.

III. DISCUSSION

With their Motion, Defendants raise four issues with Mr. Bone's opinions: (1) Mr. Bone's opinions on damages regarding Trade Secret 1 are based on unreliable methods and assumptions (for a number of reasons); (2) Mr. Bone's use of a lump sum reasonable royalty

[2] Plaintiff has dropped Trade Secret 3 from the case. (D.I. 367 at 7 n.6; D.I. 408 at 15 n.14)

award is unsupported; (3) Mr. Bone's allegedly comparable agreements for Trade Secrets 2, 4, 5 and 8 are not comparable; and (4) Mr. Bone's unjust enrichment/avoided cost analysis relating to Trade Secrets 2, 4 and 8 relies on incorrect salary information. (D.I. 336 at 29-34) The Court will address these arguments in turn.

A. Mr. Bone's opinions on damages regarding Trade Secret 1

For Trade Secret 1, Mr. Bone offers a reasonable royalty analysis, opining that Plaintiff's damages for Defendants' misappropriation total $104.2 million. (D.I. 337, ex. 25 at ¶ 220) Mr. Bone utilizes a "maximum willingness to pay and a minimum willingness to accept framework" for Trade Secret 1; in doing so, he explained that the facts enabled "consideration of a bargaining range the parties would have considered in negotiating the ultimate royalty rate." (*Id.* at ¶ 62 & n.179) Defendants argue that there are several flaws with Mr. Bone's damages opinion for Trade Secret 1, each of which "provides an independent basis" to exclude Mr. Bone's opinion relating to damages as to that trade secret. (D.I. 336 at 29-32) The Court will address all but one of these alleged flaws below.[3]

1. Inhibrx's maximum willingness to pay

First, Defendants contend that the information that Mr. Bone utilized to calculate Inhibrx's maximum willingness to pay renders his opinion unreliable. (*Id.* at 29-30) Mr. Bone

[3] One of Defendants' arguments as to why Mr. Bone's opinions regarding damages for Trade Secret 1 must be excluded relates to Mr. Bone's opinions regarding Inhibrx's increased probability of success ("POS") for its INBRX-105 program in light of its access to Trade Secret 1. (*See, e.g.*, D.I. 337, ex. 25 at ¶ 118) Defendants argue that Mr. Bone's POS opinions must be excluded because he relies on Dr. Grabstein for them, and Dr. Grabstein is not an expert in POS. (D.I. 336 at 30) This argument is related to a portion of Defendants' motion to exclude certain opinions of Dr. Grabstein (the "Grabstein *Daubert* motion") in which Defendants argue that Dr. Grabstein's opinions regarding POS should be excluded. (D.I. 336 at 34; *see also* D.I. 367 at 31) For efficiency's sake, the Court will therefore take up this portion of the Motion at the same time that it assesses the Grabstein *Daubert* motion.

relied upon an April 2021 e-mail from Inhibrx's Chief Financial Officer ("CFO") Kelly Deck to certain investors; the e-mail attached a "current projection" that "[a]ssumes an outlicense of either [INBRX-]105 or [INBRX-]106 in [Quarter 3 2022] for [redacted] upfront" (the [redacted] figure"). (D.I. 337, ex. 34; D.I. 372, ex. 27 at ¶ 97) According to Defendants, Mr. Bone's reliance on this e-mail is inappropriate because Ms. Deck testified at her deposition that the [redacted] figure was "completely speculative." (D.I. 336 at 29 (citing D.I. 337, ex. 35 at 39-40); D.I. 386 at 13-14)

The Court does not agree that Mr. Bone's reliance on the [redacted] figure in Ms. Deck's April 2021 e-mail means that his opinion regarding damages for Trade Secret 1 must be excluded. While Ms. Deck did generally acknowledge during her deposition that "most of these things [outlined in her e-mail] did not happen . . . . [i]t was completely speculative[,]" she also testified that the [redacted] figure specifically "was provided by [Inhibrx's Chief Executive Officer ('CEO')] as an estimate had we been able to outlicense one of those programs. That was an estimate that we thought we would get as an upfront payment." (D.I. 372, ex. 53 at 38-40) Further, she explained that the [redacted] figure "was based on like other deals that are out there." (*Id.* at 39) Thus, looking at the full context of her testimony, Ms. Deck did *not* testify that the [redacted] figure was pulled out of thin air. And so the Court will not exclude Mr. Bone's opinion for relying on this figure.

Additionally, in order to help corroborate the [redacted] figure, Mr. Bone reviewed "documents that identify the types of deal terms that Inhibrx was likely considering in developing its expectations"; these consisted of summaries of licensing agreements in: (1) a 2023 Intron Health analysis report (the "Intron Health report") and (2) a spreadsheet produced by Plaintiff. (D.I. 372, ex. 27 at ¶¶ 98-99; D.I. 337, ex. 33 at 211-12; D.I. 336 at 29) Defendants

contend that because Mr. Bone did not review the underlying licensing agreements that are referenced in these summaries, then he cannot reliably assert that the agreements are comparable—and thus this opinion must be excluded. (D.I. 336 at 29-30; D.I. 386 at 14-15)

In his expert report, Mr. Bone explained that the Intron Health report: (1) was titled "Inhibrx: Winning in a New Modality[;]" (2) stated that the "clinical data releases" from molecules including INBRX-105 "may potentially lead to material partnership deals within the next 12-18 months"; (3) stated that based on benchmarking of recent oncology deals and the potential of Inhibrx's molecules, "total deal values of [greater than $1 billion] are possible"; (4) included a chart of almost 20 oncology deals from the 2019-2022 time period, all of which had "a total deal value [of] over $1 billion"; (5) was e-mailed by Inhibrx's CEO to all Inhibrx employees; and (6) was reviewed by Inhibrx's CEO, who provided feedback on it to Intron Health.[4] (D.I. 372, ex. 27 at ¶ 98 & n.263) And Mr. Bone also explained that he relied on documents used by Plaintiff to track key terms of oncology deals, filtering the information to identify agreements with specific terms that were relevant to the instant matter. (*Id.* at ¶ 99 & n.265; *see also id.*, ex. 34 at ¶¶ 185-86)

In sum, Mr. Bone relied on an e-mail from Inhibrx's *own CFO* (that the CFO sent to *Inhibrx's own investors*) in order to estimate payment terms. And then Mr. Bone utilized the summaries—one set contained in a report that was *commissioned by, reviewed by and praised by Inhibrx*, and the other set found in a document kept in the ordinary course of business by

[4] In an e-mail to an Intron Health representative, Inhibrx's CEO noted that Inhibrx did a "thorough review" of the Intron Health report and that the report "gives an excellent description of [Inhibrx's] programs" and its "share price potential for investors." (D.I. 372, ex. 81) Additionally, the Intron Health report indicates that it was "commissioned by" Inhibrx. (*Id.*, ex. 82 at INBRX168346)

Plaintiff—in order to corroborate the [redacted] figure in that e-mail. In light of this, the Court cannot agree that Mr. Bone utilized an unreliable methodology. It may be that Defendants will ultimately have a good argument that, as to the licensing agreements cited in the summaries, some aspect of the actual terms of those agreements (perhaps an aspect not facially referenced in the Intron Health report or in the spreadsheet) renders the agreements a bad comparator here. But if that is so (and the Court does not know that it will be so), Defendants can take the issue up with Mr. Bone on cross-examination. *See, e.g.*, *Labyrinth Optical Techs. LLC v. Alcatel-Lucent USA, Inc.*, Case No. SACV 12-0759 AG (MLGx), 2015 WL 12720323, at *7 (C.D. Cal. Mar. 10, 2015) (rejecting defendants' challenges to a damages expert's royalty rate calculation on the ground that, *inter alia*, the expert relied on only summary information for half of the comparable licenses, where the expert acknowledged that the "information they provide is only at a high level. . . . [a]nd they contribute only a limited benchmark to his analysis[;]" thus, "[g]iven the role the disputed licenses play in [the expert's] analysis, cross-examination will suffice to explore the applicability of those licenses to the appropriate royalty in this case").[5]

2. Plaintiff's minimum willingness to accept

In calculating Plaintiff's minimum willingness to accept, Mr. Bone opines that in the hypothetical negotiation, Plaintiff would consider its potential loss of competitive positioning

[5] Now, it surely seems better practice for an expert to actually review a full license agreement itself (assuming the full agreement is available to the expert), as opposed to just reviewing a summary of its terms, before making use of the agreement in an expert report. In certain cases, an expert's reliance only on such a summary could help inform a winning *Daubert* motion. *See, e.g., EVM Sys., LLC v. Rex Med., L.P.,* No. 6:13-CV-184, 2015 WL 4911090, at *8 (E.D. Tex. Aug. 17, 2015). But under the particular facts here—i.e., where the summaries are being used only as a benchmark to corroborate a figure drawn from a suitable source, and where there is evidence that the parties validated or relied on these summaries—Mr. Bone's use of the summaries is not disqualifying.

that could result from allowing a competitor to access its trade secrets. (D.I. 372, ex. 27 at ¶ 212) Defendants contend that this assumption is improper and unreliable because in reality, INBRX-105 was ahead of Plaintiff's molecule at the time, and because third-party Genmab had a competing molecule that was ahead of both Defendants' and Plaintiff's molecules. (D.I. 336 at 31; D.I. 386 at 15)

The Court will not exclude Mr. Bone's opinion on this basis. While Mr. Bone did reference the possibility of Plaintiff losing "first-mover" position in the market, his opinion also appears to consider Plaintiff's loss of "other relative entry positioning[.]" (D.I. 372, ex. 27 at ¶ 212) Therefore, Mr. Bone's opinion does not seem to be premised solely on the assumption that Plaintiff was or would be in the "lead" as of the time of the hypothetical negotiation, or that Plaintiff was expecting to be first to market. (D.I. 337, ex. 39 at ¶ 91; *see also id.* at ¶ 99 (Mr. Bone noting his opinions in this regard were made to "illustrate I-Mab's overall perspective on the value of relative competitive positioning in any given biopharmaceutical market" and that there was a decline in sales for the loss of competitive positioning for first mover status *and* for subsequent positions)).[6]

3. Use of gross sales instead of net sales

[6] Defendants also assert that even if Plaintiff did have a competitive posture advantage to lose to Inhibrx, Inhibrx's competitive posture would have further *suffered* if Inhibrx used Plaintiff's trade secrets to improve INBRX-105—because Inhibrx's molecule could only be changed by pulling it out of clinical studies (which would be to Inhibrx's detriment). (D.I. 336 at 31) In support, Defendants cite to Dr. Grabstein's report; here, Dr. Grabstein states that the only way for INBRX-105 to compete with Plaintiff's molecule with respect to inherent safety would be to pull it out of clinical studies and redesign it. (D.I. 337, ex. 7 at ¶ 251) But, as Plaintiff points out, that was not the end of Dr. Grabstein's opinion in that respect. Rather, he opined that Defendants *did* make certain changes to the INBRX-105 program *without* pulling it out of clinical studies. (D.I. 367 at 32 (citing D.I. 372, ex. 29 at ¶¶ 256-62))

Defendants' next critique of Mr. Bone's opinion is that his use of probability-adjusted *gross* sales as a royalty base instead of *net* sales is unreliable. This is purportedly so because the evidence specifies that running royalties on net sales should be taken into account, and because Plaintiff's licensing expert Dr. Ashley Stevens testified that using net sales is "almost universal" in the pharmaceutical industry for licensing transactions. (D.I. 336 at 31 (quoting D.I. 337, ex. 38 at 62-63))

Mr. Bone noted in his reply expert report that he used gross sales because [redacted] (D.I. 337, ex. 39 at ¶ 102) In light of Mr. Bone's explanation, Defendants' challenge here is not grounds for exclusion. Instead, it goes to the weight of Mr. Bone's testimony. *Cf. 10x Genomics, Inc. v. NanoString Techs., Inc.*, 690 F. Supp. 3d 449, 464 (D. Del. 2023) (concluding that the expert's "use of gross profit margins [rather than net profits] does not render her methodology unreliable and is not a basis to exclude her opinion") (citing cases).

4. ABL Bio's Interest in Trade Secret 1

Finally, Defendants contend that Mr. Bone improperly calculated the value of Trade Secret 1 as a whole (thus including the value to co-owner ABL Bio) instead of apportioning the value as to Plaintiff's ownership interest.[7] (D.I. 336 at 31) This failure, according to Defendants, inflates Mr. Bone's damages analysis and risks a double recovery by non-party ABL Bio. (*Id.*)

[7] As the Court previously explained, ABL Bio owns the sole rights to Trade Secret 1 in Greater China and Korea, and ABL Bio and I-Mab are co-owners of Trade Secret 1 in the United States. (D.I. 408 at 8)

In response, Plaintiff argues that Defendants' apportionment argument is irrelevant because Plaintiff has the right to recover the full amounts for all territories. (D.I. 367 at 33) In support, it points to the July 26, 2018 Collaboration Agreement between Plaintiff and ABL Bio ("Collaboration Agreement") as demonstrating that ABL Bio has assigned its right to recovery for the trade secret misappropriation at issue to I-Mab. (D.I. 372, ex. 61 at § 11.9 (*cited in* D.I. 367 at 33)) Plaintiff also references documents that were not produced to Defendants in support of this position. (D.I. 367 at 33 (citing *id.* at 4 & n.5)) The Court cannot rely on the latter group of documents here. (D.I. 408 at 13 n.11) But the Collaboration Agreement provides some support for Plaintiff's view, and so the Court will not exclude Mr. Bone's opinion on this ground.

B. Mr. Bone's use of a lump sum reasonable royalty award

Mr. Bone opines that "a reasonable royalty resulting from a hypothetical negotiation for each trade secret group would likely be structured as a lump sum" payment (instead of as a running royalty). (D.I. 337, ex. 25 at ¶ 86; *see also id.* at ¶ 87) Defendants argue that Mr. Bone's use of a lump sum payment is unsupported because: (1) Dr. Stevens testified that running royalty payments are typical in the pharmaceutical industry, and that he would "[p]robably" expect more backend compensation than an upfront payment in a licensing agreement for INBRX-105; and (2) the licenses that Mr. Bone relies upon utilize a running royalty structure. (D.I. 336 at 32-33; D.I. 337, ex. 38 at 275-77; D.I. 386 at 16) Thus, Defendants contend that Mr. Bone's structure for calculating the reasonable royalty is unreliable (because the parties would have agreed to a running royalty structure in the hypothetical negotiation, instead of a lump sum payment) and must be excluded. (D.I. 336 at 33)

The Court does not agree. As Plaintiff points out, Defendants' own damages expert, Dr. Richard Manning, did not suggest that a running royalty should be used here. Instead, Dr. Manning seemed to accept Mr. Bone's reliance on a lump sum payment, concluding that "[e]conomic principles dictate" lump sum payments for the trade secrets. (D.I. 367 at 34 (citing D.I. 372, ex. 38 at ¶¶ 15(a), (f), 69-70, 74)) And while Dr. Stevens did testify that running royalty payments are "typical" in this industry and that he would "probably" expect more backend compensation with respect to a deal for a product like INBRX-105, his testimony does not go quite as far as Defendants want it to—in that he does not opine that a lump sum payment would *never happen* in these circumstances. (*See* D.I. 337, ex. 38 at 275-77) Finally, Mr. Bone provides some understandable reasons why, in his view, a payment *would* be structured as a lump sum here. These include that, for example, a lump sum would: (1) cap Defendants' liability and enable future use without additional expenditures; (2) remove the risk that Defendants would underreport royalties; and (3) eliminate the need for ongoing administrative burden. (*Id*., ex. 25 at ¶ 86) Mr. Bone also explained that it is not uncommon for pharmaceutical agreements to include an upfront payment (even if additional backend payments were also included). (*Id.* at ¶ 87; D.I. 372, ex. 27 at ¶ 101)

With evidence in the record suggesting that "a lump-sum payment is a possible outcome of [the parties'] hypothetical negotiations. . . . the jury must decide what the proper payment method for any royalty should be." *Steves & Sons, Inc. v. JELD-WEN, Inc.*, Civil Action No. 3:16-cv-545, 2018 WL 2172502, at *10 (E.D. Va. May 10, 2018).

C. Mr. Bone's comparable agreements for Trade Secrets 2, 4, 5 and 8

With respect to Trade Secrets 2, 4, 5 and 8, Mr. Bone relies on a November 21, 2018 agreement between Plaintiff and Bridge Health Bio-tech Co., Ltd. (the "Bridge Health

Agreement") and a November 28, 2018 Bi-Specific Antibody Strategic Collaboration and Clinical Trial Agreement between Plaintiff and TRACON Pharmaceuticals, Inc. (the "TRACON BsAb Agreement") as comparable agreements for determining a reasonably royalty. (D.I. 337, ex. 25 at ¶¶ 141-54) In their opening brief, Defendants argue that Mr. Bone's reliance on these agreements should be excluded because Mr. Bone "failed to conduct a comparability analysis and ignored that both agreements were for entire molecules, not data *related to molecules*, as is the case here." (D.I. 336 at 33 (emphasis in original))

Defendants are wrong.[8] As Plaintiff points out, Mr. Bone *does* conduct a comparability analysis. (D.I. 367 at 34) With respect to the Bridge Health Agreement, Mr. Bone sets out four paragraphs addressing the comparability of this agreement. (D.I. 372, ex. 27 at ¶¶ 171-74) Mr. Bone relies on Dr. Grabstein with respect to technical comparability for the Bridge Health Agreement, (*id.*), and Dr. Grabstein in turn addressed this issue in four paragraphs of his report, (*id.*, ex. 29 at ¶¶ 212-16). Similarly, with respect to the TRACON BsAb Agreement, Mr. Bone spends eight paragraphs discussing the comparability of this agreement. (*Id.*, ex. 27 at ¶¶ 175-82) He again relies on Dr. Grabstein for technical comparability, (*id*.), and Dr. Grabstein addressed this issue in extensive detail, (*id.*, ex. 29 at ¶¶ 163-211). And despite Defendants' argument to the contrary, Mr. Bone *does* acknowledge differences in the rights licensed in these agreements and the alleged trade secrets at issue here. (*See, e.g.*, *id.*, ex. 27 at ¶ 172 ("I

[8] Defendants also assert that Plaintiff's licensing expert, Dr. Stevens, did not list these agreements as comparable. (D.I. 336 at 33) But Dr. Stevens did opine in his report that the TRACON BsAb Agreement was comparable, (D.I. 372, ex. 34 at ¶ 192), and the Court does not understand Dr. Stevens' deposition testimony that Defendants point to in reply as necessarily suggesting otherwise, (D.I. 386 at 17 (citing D.I. 387, ex. 12 at 106-08 (Dr. Stevens testifying that the section in which paragraph 192 is found in the "end of [his] discussion in [his] opening report of comparable agreements")))

understand the trade secrets relate to clinical trial information, which Dr. Grabstein believes is much more significant than sequences with no clinical validation."); *id.* at ¶ 179 ("[W]hile the [TRACON] BsAb Agreement provided Tracon with [redacted] while Inhibrx would be licensing the trade secret data that would then, if it chose to, have to be incorporated into its own molecules, because the trade secret information relates to early phases of development, the parties would understand the trade secrets would provide an easier development path for similar molecules to Inhibrx than without a license.")) Thus, the Court is not persuaded that Mr. Bone's use of these agreements must be excluded.[9]

D. Mr. Bone's unjust enrichment/avoided cost analysis relating to Trade Secrets 2, 4 and 8

For Trade Secrets 2, 4 and 8, Mr. Bone offers an avoided cost analysis in addition to a reasonable royalty analysis. For his avoided cost analysis, Mr. Bone assumes that Plaintiff's employees working to develop Trade Secrets 2, 4 and 8 would have been paid [redacted] per year. (D.I. 337, ex. 25 at ¶ 69) Defendants argue that this figure is inaccurate and that Mr. Bone's opinions based on it should be excluded because: (1) the only documentary evidence that Mr. Bone cites to reflects an I-Mab salary of [redacted] per year; and (2) Inhibrx's evidence reflects an average annual total salary for research and development staff of [redacted]. (D.I. 336 at 34 (citing D.I. 337, ex. 25 at ex. 17 n.2; *id*., ex. 39 at ¶ 44; *id*., ex. 45 at 8; *id*., ex. 46); *see also* D.I. 386 at 17)

[9] In their reply brief, Defendants seem to advance a new argument that Mr. Bone "failed to apportion damages to the value of the alleged trade secrets." (D.I. 386 at 17 (citing D.I. 387, ex. 13 at § 5.5, ¶¶ 145-49)) New arguments cannot be made in reply briefs, and in any event, the portion of Dr. Manning's report that Defendants cite in support here does not appear to be in the record before the Court. (*See* D.I. 387, ex. 13)

The Court will not exclude these opinions on this ground. Mr. Bone explains that he picked the [redacted] figure based on discussions with Plaintiff's Chief Business Officer, Dr. Weimin Tang,[10] and that while an agreement between Plaintiff and [redacted] utilized a salary of [redacted] per year, Mr. Bone used [redacted] given that "Inhibrx is based in the U.S. where [he] understand[s] employee costs are typically higher than in China and Korea[.]" (D.I. 337, ex. 25 at ex. 17 n.2; *see also* D.I. 372, ex. 27 at ¶¶ 65-66; D.I. 158 at 117) While Defendants may have some good fodder for cross-examination regarding this salary figure, their disagreement is an argument that "should be made on cross-examination of the witness in front of the trier of fact." *Quintel Tech. Ltd. v. Huawei Techs. USA, Inc.*, Civil Action No. 4:15-CV-307, 2018 WL 626355, at *8 (E.D. Tex. Jan. 30, 2018) (internal quotation marks and citation omitted), *order clarified on other grounds*, 2018 WL 6930270 (E.D. Tex. Feb. 27, 2018); *see also FinancialApps, LLC v. Envestnet, Inc.*, Civil Action No. 19-1337-GBW-CJB, 2023 WL 6037242, at *4, *5 (D. Del. Sept. 13, 2023).

IV. CONCLUSION

For the foregoing reasons, Defendants' Motion is DENIED (with the exception of the portion of the Motion relating to Mr. Bone's reliance on Dr. Grabstein's POS analysis, which the Court will take up when it considers Defendants' motion to exclude the opinions of Dr. Grabstein).

Because this Memorandum Order may contain confidential information, it has been released under seal, pending review by the parties to allow them to submit a single, jointly-

[10] Dr. Tang conveyed to Mr. Bone that Plaintiff "typically uses" a figure of [redacted] per employee when negotiating agreements that require identifying such a cost. (D.I. 337, ex. 25 at ex. 17 n.2)

proposed, redacted version (if necessary) of the Memorandum Order. Any such redacted version shall be submitted no later than **October 16, 2024** 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 Order.

Dated: October 10, 2024

Christopher J. Burke
Christopher J. Burke
UNITED STATES MAGISTRATE JUDGE