## UNITED STATES DISTRICT COURT MIDDLE DISTRICT OF FLORIDA FORT MYERS DIVISION

KEVIN J. HOLM,

Plaintiff,

v. Case No: 2:22-cv-424-JES-NPM

UNITED STATES OF AMERICA,

Defendant.

## OPINION & ORDER

This matter comes before the Court on defendant's Daubert Motion (Doc. #31) filed on September 26, 2023 and plaintiff's Response in Opposition (Doc. #34) filed on November 1, 2023.

The Motion refers to itself as "premature . . . given the record" and hints that it was filed simply to comply with the Court's Case Management and Scheduling Order. (Doc. #31, p. 2.) In the Motion's 3.01(g) certification, the parties assured the Court they conferred prior to filing the Motion and that "[w]hile the parties disagree on the ultimate outcome of the Motion, they were able to agree on nonopposition [sic] for deferring the issue to trial—if the Court is inclined to do so . . . " (Id. at p. 20.)

In Daubert motions, the courts exercise a gatekeeping function and that "gatekeeping function's core use is to keep junk science away from the jury." <u>United States v. Ware</u>, 69 F.4th 830, 847 (11th Cir. 2023). In bench trials such as this,

"[t]here is less need for the gatekeeper to keep the gate when the gatekeeper is keeping the gate only for himself." <u>United States v. Brown</u>, 415 F.3d 1257, 1269 (11th Cir. 2005). As a result, this Court has stated that "[w]here a trial judge conducts a bench trial, the judge need not conduct a <u>Daubert</u> (or Rule 702) analysis before presentation of the evidence," <u>Metro. Life Ins. Co. v. Liebowitz</u>, No. 2:20-CV-276-JES-MRM, 2021 WL 4244210, at \*3 (M.D. Fla. Sept. 17, 2021), and has denied similar motions without prejudice, leaving objections to testimony to be better dealt at the bench trial. <u>See Casequin v. CAT 5 Contracting</u>, Inc., No. 2:18-CV-588-JES-MRM, 2022 WL 409273, at \*2 (M.D. Fla. Feb. 10, 2022).¹ This case merits no differential treatment. The Motion will be denied without prejudice and any objections to testimony will be ruled on at the bench trial.

Accordingly, it is hereby

## ORDERED:

<sup>&</sup>lt;sup>1</sup> Importantly, the Eleventh Circuit has recognized district courts are afforded great flexibility and deference in <u>Daubert</u> determinations, especially in how they "manage their dockets and counsels' time to provide the most efficient and just resolution of the issues." <u>Ware</u>, 69 F.4th at 846. So too has the court said that no categorical rule or caselaw prevents contested <u>Daubert</u> evidence from being presented before a ruling on its admissibility. <u>United States v. Esformes</u>, 60 F.4th 621, 636 (11th Cir. 2023), <u>cert. denied</u>, No. 23-95, 2023 WL 8531890 (U.S. Dec. 11, 2023).

Defendant's Daubert Motion (Doc. #31) is **DENIED without** prejudice.

DONE and ORDERED at Fort Myers, Florida, this <u>2nd</u> day of January, 2024.

JOHN E. STEELE

SENIOR UNITED STATES DISTRICT JUDGE

Copies:

Counsel of Record