

# **Exhibit B**

THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

SAKAB SAUDI HOLDING COMPANY,

Plaintiff,

v.

SAAD KHALID S AL JABRI, *et al.*,

Defendants.

Case No. 21-cv-10529-NMG

**[PROPOSED] ORDER UPHOLDING THE GOVERNMENT'S ASSERTION OF THE  
STATE SECRETS AND RELATED STATUTORY PRIVILEGES AND EXCLUDING  
PRIVILEGED INFORMATION**

Having reviewed the Motion for Protective Order by Intervenor United States to Exclude Information Pursuant to the State Secrets and Related Statutory Privileges, the Director of National Intelligence's declaration asserting the state secrets privilege, and related statutory protections, as well as the classified declarations in support thereof submitted by the Government for *ex parte, in camera* review, the Court finds that the United States has satisfied the procedural requirements for invoking the state secrets privilege and has established that there is a reasonable danger that disclosure of the information described therein would harm national security. The Court therefore upholds the Government's assertion of the state secrets privilege and grants its motion to exclude privileged information from all future proceedings in this litigation.

To implement the exclusion of privileged information, it is hereby **ORDERED** as follows:

1. The following category of privileged information, described in general, non-classified terms, is hereby excluded from this litigation: Information concerning sources,

methods, capabilities, activities, or interests of the United States Intelligence Community, as well as information that might tend to reveal or disclose the identities of United States Government employees, affiliates, or offices with whom one or more of the parties or the Kingdom of Saudi Arabia may have had certain interactions and the disclosure of which would be damaging to U.S. national security interests (hereinafter, “Privileged Information”).

2. Privileged Information shall be excluded from all further proceedings in this case and may not be sought or used in discovery, depositions, at trial or any hearing, in mediation, or in any of the Parties’ filings. If a Party and the Government disagree about whether particular information falls within the scope of the Privileged Information excluded by the Court in this order, the Parties shall follow the direction of the Government on the matter before any disclosure, subject to further review by the Court pursuant to paragraph 12 below. The Parties are ordered to work in good faith to avoid disclosure of Privileged Information, consistent with the determinations of this Court and the Government, in all future proceedings in this case. Any Party that discloses Privileged Information, without authorization, may be subject to appropriate sanctions by this Court.

3. Each Party shall provide the Government, through counsel from the U.S. Department of Justice (“DOJ”), with drafts of all case filings for review at least 10 calendar days before they are to be filed. The Parties shall make these submissions through channel(s) specified by DOJ counsel, which should be selected by the Government on the basis of appropriate information security considerations. The drafts submitted to the Government shall exclude the Privileged Information described in paragraph 1, and the Parties must exclude from their filings any further information designated as privileged by the Government. If the Government determines that any portion of a draft case filing contains, references, or is

reasonably likely to disclose Privileged Information, the Government shall redact that portion of the draft and return it to the responding Party for filing. Only the version of the case filing that has been redacted by the Government may be filed or otherwise used in this litigation, subject to further review of any dispute on the matter by the Court pursuant to paragraph 12.

4. Each Party shall also provide the Government, through DOJ counsel, with a draft of any discovery requests (including, but not limited to interrogatories, requests for admission, requests for production of documents, and third-party subpoenas) and discovery responses that may contain, reference, elicit, or otherwise risk disclosure of Privileged Information. The Parties must provide such documents to DOJ counsel at least 10 calendar days before the intended use of such documents in connection with the litigation. If the Government determines that it requires more than 10 calendar days to review a voluminous discovery response, it shall notify the Parties and work in good faith to agree on a timeline for review that is reasonable under the circumstances.

5. The draft discovery requests submitted to the Government shall exclude the Privileged Information described in paragraph 1. The Government will review all documents received from the Parties pursuant to paragraph 5 of this order.

- a. If the Government determines that any discovery request or portion of a discovery request still contains, references, or is reasonably likely to elicit or otherwise disclose Privileged Information, the Government shall inform the requesting Party and instruct the Party either (i) to refrain from sending the request, or portion of a request, identified by the Government; or (ii) that the request must be construed as not calling for Privileged Information.
- b. If the Government determines that any portion of a discovery response

contains, references, or is reasonably likely to disclose Privileged Information, the Government shall redact that portion of the response and return the response to the responding Party for its use in discovery. Only the version of the discovery response that has been redacted by the Government may be produced or otherwise used in this litigation, subject to further review of any dispute on the matter by the Court pursuant to paragraph 12.

- c. If the Government determines that any document cannot be produced in redacted form without disclosing Privileged Information (*e.g.*, because it consists entirely of Privileged Information), the Government will inform the responding Party. Any such documents may not be produced or otherwise used in this litigation, subject to further review of any dispute on the matter by the Court pursuant to paragraph 12.

6. The Parties shall confer with the Government, through DOJ counsel, in connection with depositions or other examinations of witnesses—including at trial—in this litigation. Counsel for the Party taking the deposition or otherwise examining the witness may not seek to elicit testimony that falls into the category of Privileged Information described above. All questions shall be construed as not calling for information falling into this category, and all responses shall exclude such information.

7. Subject to any separate agreement that the Parties and the Government may reach, the following procedures shall be used at any deposition in this litigation:

- a. At least 14 calendar days before the deposition, counsel for the Party taking the deposition must provide the Government with a list of topics to be discussed during the deposition as well as copies of any documents that may

be introduced or otherwise relied upon during the deposition. The Government may provide limiting instructions in advance of the deposition or instruct counsel not to discuss a particular topic, to avoid disclosures of Privileged Information. To the extent there is disagreement regarding the Government's instructions, the Party taking the deposition may use the procedures set forth in paragraph 12 to resolve the dispute.

- b. The deposition shall be held in person at a mutually agreeable location, unless the parties and the Government agree otherwise.
- c. The deposition shall not be audio- or video-recorded, unless the Parties and the Government agree otherwise.
- d. Only the Parties' counsel, the deponent, Government counsel, and a Government-approved court reporter may attend the deposition.
- e. During the deposition, Government counsel may object to questions or answers that it believes would risk disclosure of or tend to reveal Privileged Information, and may instruct the witness not to answer or to stop responding to a question, and the witness shall follow that instruction and not provide the requested answer or testimony, subject to further review of any dispute on the matter by the Court pursuant to paragraph 12.
- f. The deposition will be transcribed by the Government-approved court reporter. The deposition transcript will be displayed only on the court reporter's laptop at the deposition location, i.e., remote feeds are prohibited, and will not otherwise be displayed to anyone else during or after the deposition. After the deposition, the transcript will be transferred from the

court reporter to the Government as instructed by the Government, and the transcript will not otherwise be transferred or copied, except as approved by the Government. The Government will review the transcript for Privileged Information, make any appropriate redactions, and provide each Party with one copy of this redacted transcript within 21 calendar days.

8. Privileged Information may not be used, or otherwise referenced, during any future mediation of the Parties' claims or in settlement discussions. Each Party shall provide drafts of any mediation- or settlement-related submissions for the Government's review at least 10 calendar days before they are to be submitted to the mediator or the other Party. The drafts submitted to the Government shall exclude Privileged Information described in paragraph 1, and the parties must exclude from their mediation- or settlement-related submissions any further information designated as privileged by the Government.

9. If the Government deems it appropriate, the Government may require that any future mediation of the Parties' claims be conducted in person, either at the federal courthouse in Boston, Massachusetts, or at another mutually agreeable location in the Boston or Washington, D.C. areas.

10. The Parties' disclosure of discovery materials and related communications to DOJ counsel pursuant to this Order for review and/or authorization (including all information exchanged previously for the same purpose) shall not constitute a waiver of the attorney-client privilege or attorney-work-product protections. No Party may seek (in discovery or otherwise) to obtain information or documents conveyed by another Party, pursuant to this Order, for DOJ's review and/or authorization.

11. If the Government determines that any case documents, including, but not limited

to, filings, discovery materials, deposition transcripts, and mediation submissions, contain Privileged Information and thereafter notifies the Parties of this determination, the Parties shall (1) take reasonable steps necessary to protect the Privileged Information from public release, (2) refrain from further copying, transferring, or sharing of the Privileged Information in any form that it exists, and (3) follow Government instructions concerning the disposition of the Privileged Information.

12. The procedures specified in this paragraph shall apply to the extent a Party disagrees with the Government as to whether certain specific information that has been redacted by the Government from filings or discovery falls within the Privileged Information that has been excluded by the Court pursuant to this Order, or where such a disagreement exists as to information that a Party may wish to include in a filing or seek in discovery (including in document production, other written discovery, or through deposition questioning), or to the extent there is disagreement between a Party and the Government as to compliance with any other provision of this Order. In any of these circumstances, the Parties and the Government shall meet and confer first in an effort to resolve the dispute before presenting an appropriate written motion to the Court to resolve that specific dispute before any disclosure or further proceeding. Any filing that a party intends to make in connection with such a motion shall be reviewed first by the Government in accordance with the procedures outlined in this Order.

**IT IS SO ORDERED.**

Dated: \_\_\_\_\_

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Judge Nathaniel M. Gorton  
United States District Judge