

EXHIBIT B

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10
11 UNITED STATES DISTRICT COURT
12 NORTHERN DISTRICT OF CALIFORNIA
13 SAN JOSE DIVISION

14 UNITED STATES OF AMERICA,) Case No. CR-18-00258-EJD-SVK
15)
16 Plaintiff,) **[PROPOSED] ORDER GOVERNING**
17 v.) **ISSUANCE OF RULE 17(C) SUBPOENAS AND**
18) **SETTING DISCOVERY DEADLINES DURING**
19 ELIZABETH HOLMES and) **COVID-19 PANDEMIC**
20 RAMESH "SUNNY" BALWANI,)
21)
22 Defendants.)
23) Hon. Edward J. Davila
24)
25)
26)
27)
28)

22 WHEREAS, trial in the above-captioned matter is scheduled to begin on July 28, 2020;

23 WHEREAS, the COVID-19 disease, caused by a virus that spreads easily from person to person
24 which may result in serious illness or death and has been classified by the World Health Organization as
25 a worldwide pandemic, has broadly spread throughout the United States;

26 WHEREAS, the President of United States has declared a National Emergency in response to the
27 COVID-19 outbreak;

28 WHEREAS, scientific evidence and public health best practices show that the most effective

1 approach to slowing the community transmission of communicable diseases like COVID-19 is through
2 limiting public activities and engaging in social distancing;

3 WHEREAS, the Chief Judge of the Northern District of California has ordered the closure of the
4 San Jose Courthouse to both staff and the public, with no exceptions, through April 7, 2020, which
5 period may be extended by further order. *See* N.D. Cal. General Order 73 (as amended Mar. 25, 2020);

6 WHEREAS, in recognition of the impact of court proceedings during the COVID-19 outbreak on
7 the health of jurors, witnesses, parties, attorneys, the public, court staff, Probation and Pretrial Services
8 staff, chambers staff, and judges, the Chief Judge of the Northern District of California has ordered,
9 among other things, that no criminal jury trial will be commenced before May 1, 2020; that appearances
10 in criminal cases before the district judges may be waived and postponed, and that the requirements for
11 filing of courtesy copies to chambers is suspended pending further notice. *See* N.D. Cal. General Order
12 72 (Mar. 16, 2020);

13 WHEREAS, this Court's General Order 72 permits individual Judges to make case-by-case
14 exceptions to procedures at their discretion;

15 WHEREAS, Criminal Local Rule 17-2 provides that no subpoena in a criminal case may require
16 the production of books, papers, documents or other objects in advance of the trial, hearing or
17 proceeding at which these items are to be offered in evidence, unless the Court has entered an order
18 pursuant to Rule 17(c) of the Federal Rules of Criminal Procedure;

19 WHEREAS, Criminal Local Rule 17-2 further provides that an order permitting issuance of a
20 Rule 17(c) subpoena may be obtained by filing either a noticed motion or, for good cause, an *ex parte*
21 motion without advance notice to the opposing party;

22 WHEREAS, Criminal Local Rule 17-2 further provides that any Rule 17(c) subpoena must be
23 returnable to the Court and the items sought therein must be delivered to the Court at the place, date and
24 time indicated;

25 WHEREAS, the normal operation of Rule 17-2 in this complex case likely will require numerous
26 manual filings and deposits at the San Jose Courthouse which may be impossible or impracticable under
27 present circumstances;

28 WHEREAS, it is necessary to meet all deadlines going forward to ensure that there are no

1 additional delays that prejudice the defense’s ability to prepare for trial under the current, challenging
2 circumstances;

3
4 IT IS HEREBY ORDERED that the parties in the above-captioned matter may issue Rule 17(c)
5 subpoenas without a prior application to the Court. Documents subject to the Rule 17(c) subpoenas
6 issued under this Order shall be returnable directly to the parties at the date, time, and location indicated
7 on the subpoena.

8 IT IS FURTHER ORDERED that, in order further to facilitate trial preparation in this matter on
9 the current schedule, the government shall adhere to the following discovery deadlines:

- 10 1. The government is to produce all discovery referenced in its Rule 404(b) notice, Bill of
11 Particulars, and expert witness disclosures that has not yet been produced by **April 7, or not**
12 **later than within 24 hours of the issuance of this order.**
- 13 2. The government is to produce documents from the remaining priority FDA custodians (as
14 defined in the agreement between the parties) by **April 10, or not later than within 24 hours of**
15 **the issuance of this order.**
- 16 3. The government is to produce the remainder of the FDA discovery by **April 21, or not later**
17 **than within 24 hours of the issuance of this order.** The Court will entertain a defense motion
18 to exclude all FDA-related evidence if this deadline is not met.
- 19 4. The government taint team is to identify all documents within the taint materials that are
20 Theranos privileged and not usable in the case by **April 21, or not later than within 24 hours**
21 **of the issuance of this order.** The Court will entertain a defense motion to exclude all
22 documents in the taint materials if this deadline is not met.

23
24 **IT IS SO ORDERED.**

25 Dated _____

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27 _____
28 Hon. Edward J. Davila
United States District Judge