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COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

**SUPERIOR COURT
BUSINESS LITIGATION SECTION**

COMMONWEALTH OF MASSACHUSETTS,

Plaintiff,

v.

KALSHIEX LLC,

Defendant.

CIVIL ACTION NO. 2584CV02525-BLS1

**KALSHI'S RESPONSE TO THE COMMONWEALTH'S
PROPOSED PRELIMINARY INJUNCTION ORDER**

Defendant KalshiEX LLC (“Kalshi”) submits this response to the Commonwealth’s Response to Order Granting Motion for Preliminary Injunction (Dkt. No. 48, the “CW Resp.”), including the proposed preliminary injunction order (the “PI Order”) attached as Exhibit A thereto by the Commonwealth of Massachusetts (the “Commonwealth”). *See* Dkt. No. 48 (not yet docketed).

As indicated in Kalshi’s Emergency Motion to Stay Injunction Pending Appeal, filed contemporaneously (not yet docketed), Kalshi intends to appeal the Court’s Memorandum of Decision and Order on Plaintiff’s Motion for a Preliminary Injunction and Defendant’s Motion to Dismiss (the “PI Decision”) and any resulting preliminary injunction order. As explained in the Emergency Motion, Kalshi believes that a stay pending all state-level appeals is warranted under the circumstances. Accordingly, Kalshi’s response herein to the terms of the Commonwealth’s proposed PI Order is without prejudice to Kalshi’s request for a stay and its underlying appeal of the PI Decision; it is intended solely to advance Kalshi’s objections to those terms if and when the PI Order is entered.

I. Response to the Terms of the Commonwealth’s Proposed PI Order

Kalshi responds to the terms of the proposed PI Order to which it objects in the order in which they are set forth in the Commonwealth’s submission, as follows:

1. Injunction against “any activity in connection with sports wagering in the Commonwealth of Massachusetts, as prohibited by G.L. c. 23N, § 5” (PI Order at 1 and ¶ 1):

Kalshi objects to the scope of the proposed PI Order as overbroad. Under G.L. c 23N, § 3, the term “sports wagering” is defined to mean, in relevant part, “the business of accepting wagers on sporting events or portions of sporting events, **other events**, the individual performance statistics of athletes in a sporting event or other events or a combination of any of the same” (emphasis

added). Accordingly, the language as drafted could be interpreted to capture event contracts relating to events other than sporting events. Any such injunction would be beyond the scope of the Complaint and broader than what Kalshi understands the Commonwealth seeks to enjoin based on statements from the Attorney General's Office during conferrals and the hearing. *See, e.g.*, Dec. 9, 2025 Hr'g Tr. at 54:22-55:14 (when Court stated that the Commonwealth had "no regime in place governing political or cultural event betting," counsel for the Commonwealth confirmed that "the question before you today that we present concerns exclusively sports wagering, sporting event contracts, not the other types of contracts that Kalshi offers"). To avoid any misunderstanding, the language should be tethered to the Sports Wagering Law's definition of "sports event" or "sporting event," as follows: "[A] professional sport or athletic event, collegiate sport or athletic event, a collegiate tournament, motor race event, [or] electronic sports event." G.L. c 23N, § 3.

2. Injunction against "any platform or channel accessible in Massachusetts" (PI Order ¶ 1): Kalshi objects to the scope of the proposed PI Order as overbroad and unworkable. Kalshi partners with independent entities outside of its control that offer Kalshi's sports event contracts to their own users, some of whom may trade Kalshi sports event contracts while in Massachusetts. Kalshi cannot guarantee that those partners have the ability to or will adhere to the terms of this injunction. Although Kalshi can provide the PI Order to its partners, Kalshi does not have the ability to limit what offerings these partners make accessible to Massachusetts users. The PI Order should include specific language clarifying that it applies only to Kalshi's activities.

3. Injunction against "new contracts" (PI Order ¶¶ 1, 2, 7(a)): Kalshi objects to the term "new contract, instrument, or product" as vague and ambiguous. The PI Order should include specific language clarifying what is meant by these terms.

4. **Injunction against “[a]ccepting deposits, stake, considerations, or fees in connection with any . . . pre-existing contract” (PI Order ¶ 2):** Kalshi objects to the proposed prohibition on acceptance of fees in connection with pre-existing contracts entered by Massachusetts users. First, such a prohibition is inconsistent with language elsewhere in the proposed PI Order requiring Kalshi to settle a pre-existing contract “in accordance with the contract’s terms.” PI Order ¶ 6. Second, in the ordinary course, fees are deducted from trades at execution, which means Kalshi has already accepted deposits and fees in connection with the purchase of any “pre-existing contract.” As for possible sales of pre-existing contracts, to deduct fees from one side of the trade, but not the other, would serve to impose fees on one class of similarly situated trader (ex-Massachusetts) but not another (Massachusetts). This would likely violate Core Principle 2 of the Commodity Exchange Act (“CEA”) (7 U.S.C. § 7(d)(2)) and CFTC regulations (17 C.F.R. § 38.151(b) (requiring “comparable fee structures”)).

5. **Injunction against “[a]dvertising, promoting, marketing or soliciting participation in any contract that constitutes sports wagering under Massachusetts law to persons located in Massachusetts or using a Massachusetts address” (PI Order ¶ 3):** Kalshi objects to paragraph 3 of the proposed PI Order as overbroad and unworkable. Many of Kalshi’s advertisements run nationwide. Prohibiting advertisements around “contracts that constitute[] sports wagering” to persons “using a Massachusetts address” would be impractical as Kalshi cannot control what individuals using a Massachusetts address are exposed to when they are outside of the Commonwealth, or what those users might receive from individuals not located within the Commonwealth. This paragraph should either be deleted from the proposed PI Order in its entirety or modified to enjoin such activities concerning Kalshi’s sports event contracts targeted at Massachusetts.

6. Injunction against “[p]ermitting account creation, verification, funding, or maintenance . . . for the purpose of trading sports-wagering contracts” (PI Order ¶ 4):

Kalshi objects to paragraph 4 of the proposed PI Order as overbroad. Users of Kalshi are not able to create, verify, fund, or maintain accounts for any particular purpose or type of contract. Rather, a user simply opens and funds a single account that can be used for trading in any of the event contracts available on Kalshi’s platform. It is not possible for Kalshi to know whether, in funding an account, a user is doing so with the “purpose” of trading sports event contracts. Thus, this prohibition is unworkable and would inevitably result in restraints against trading in event contracts that are not sports-related, which is beyond the scope of the Complaint. Paragraph 4 of the proposed PI Order should be deleted in its entirety.

7. Injunction against “[d]esigning, launching, or operating products that are functionally similar to sportsbook wagers . . . for persons located in Massachusetts” (PI Order ¶ 5):

Kalshi objects to paragraph 5 of the proposed PI Order as overbroad. Kalshi does not design, launch, or operate products on a geographic basis; it is a national exchange that provides “impartial access” to all its products for all its users in accordance with Core Principle 2 of CFTC regulations (17 C.F.R. §§ 38.150, 38.151(b)). Accordingly, to stop designing, launching, or operating products “for persons located in Massachusetts” would necessarily entail doing so with respect to all Kalshi’s users nationally. This prohibition is beyond the scope of the Complaint and would impose an unacceptable restriction on Kalshi’s business. Paragraph 5 of the proposed PI Order should be deleted in its entirety.

8. Implementation of “geofencing” within seven days (PI Order ¶ 7): Kalshi objects to a seven-day implementation period for “geofencing” of persons located in Massachusetts. As explained in detail in the Declaration of Xavier Sottile (Dkt. No. 43, “Sottile

Decl.”), Kalshi does not currently have the technology to geolocate its users, defined to mean the ability to identify the location of its users at any time they are seeking to transact. Sottile Decl. ¶¶ 24-28. Kalshi has never had the need to develop such a technology given the national nature of its exchange and its impartial access obligations under federal law. Rather, as part of its “know your customer” (“KYC”) compliance process, Kalshi collects the residence (*i.e.*, home address), not the location, of its users. *Id.* ¶ 29. The process of developing and implementing geolocation technology would require engagement of a third-party vendor, investment of millions of dollars in expense, and months of effort. *Id.* ¶ 31. It is not something that can feasibly be accomplished in anything close to seven days. Kalshi further objects to the Commonwealth’s suggestion that the CFTC’s September 30, 2025 advisory requires Kalshi to adopt geolocation technology; on its face, it does not. Dkt. No. 45, Ex. A at 3. The PI Order’s compliance period with respect to geolocation technology should be extended to ninety (90) calendar days.

9. Prevention of Massachusetts users from “[m]aking any new deposits” in connection with sports event contracts (PI Order ¶¶ 7(c), 8(b)): Kalshi objects to paragraph 7(c) of the proposed PI Order as overbroad, for reasons substantially similar to its objection to paragraph 4 (*see supra* Point 6). Kalshi’s users do not earmark the funds deposited in their account for any particular purpose or type of contract. It is not possible for Kalshi to know whether, in funding an account, a user is doing so with the “purpose” of trading sports event contracts. Thus, this prohibition is unworkable, and would inevitably result in restraints against trading in event contracts that are not sports-related, which is beyond the scope of the Complaint. Paragraph 7(c) of the proposed PI Order should be deleted in its entirety.

10. Clarification of Massachusetts’ users’ ability to sell existing positions (PI Order ¶ 1, 7): Paragraph 7 of the proposed PI Order places restrictions on Massachusetts users’

ability to enter into new contracts or “increas[e], add[] to, or otherwise expand[] any existing position.” PI Order ¶¶ 7(a)-(b). For the avoidance of doubt, paragraph 7 should expressly state that the PI Order would not impose any restrictions on Massachusetts users’ ability to sell any contract to which they were a party prior to the effective date of the PI Order.

11. Notice to persons “Kalshi reasonably believes are located in Massachusetts”

(PI Order ¶ 8): Kalshi objects to this notice requirement as vague and ambiguous. Currently, Kalshi does not know when a user is located in Massachusetts. In the absence of geolocation technology, which cannot be feasibly implemented within the two-day period prescribed by paragraph 8, Kalshi has no basis to “reasonably believe” that any particular person is located in Massachusetts other than through the KYC data and IP address associated with that person’s account. This language should either be deleted from the proposed PI Order in its entirety, or should be modified to take effect upon implementation of geolocation technology in accordance with a 90-day compliance period (*see supra* Point 8).

12. Injunction requiring preservation of “all records reasonably related to Massachusetts users and any sports-wagering contracts accessible in Massachusetts” (PI Order ¶ 10): Kalshi objects to this requirement as overbroad, vague, and ambiguous. The proposed PI Order purports to require retention of “logs, communications, geolocation/location determinations, and marketing/targeting data” for “Massachusetts users,” an undefined term. These terms would appear to sweep in large swaths of data, including data not related to the Commonwealth and data not related to Kalshi’s sports-event contracts. Moreover, Kalshi is required to retain significant amounts of information and documents pursuant to the CEA. *See, e.g.*, 7 U.S.C. § 7(d)(18) (requiring DCMs to “maintain records of all activities relating to the business of the contract market—(A) in a form and manner that is acceptable to the [CFTC]; and

(B) for a period of at least 5 years”); 17 C.F.R. §§ 1.31, 38.951 (requirements for DCM record-keeping); 17 C.F.R. § 45 *et seq.* (requirements for swap data recordkeeping). Paragraph 10 of the proposed PI Order should be deleted in its entirety, or modified to require the parties to meet and confer on this issue.

II. Response to the Commonwealth’s Proposed Terms of a Stay

Kalshi appreciates the Commonwealth’s expression of willingness to agree to a “limited stay” pending appeal. CW Resp. at 2. While Kalshi is open to continued discussions on this topic, the conditions for a consensual stay presently proposed by the Commonwealth are not acceptable. They either require Kalshi to surrender fundamental appellate rights or seek to impose obligations that are similar to what would be required by the proposed PI Order itself, resulting in a “stay” of the PI Order in name only. Kalshi’s specific concerns and objections are as follows:

1. **Expedited Appeal (CW Resp. at 2 ¶ 1):** Kalshi is committed to pursuing its appeal of the PI Decision in the most expedited manner available under the relevant rules and procedures of the Appeals Court and Supreme Judicial Court (“SJC”). However, Kalshi is not able to commit that any such appeal would be “argued no later than May 2026,” even though it hopes that would be the case. CW Resp. at 2 ¶ 1. Kalshi cannot procure SJC review as of right; the SJC has discretion to deny a request for direct appellate review. Nor could Kalshi agree that, if it were to seek and obtain direct appellate review from the SJC, such acceptance would not extend the briefing schedule; the SJC may very well dictate as much. And, regardless of which appellate court retains the matter, Kalshi cannot dictate whether and when oral argument would be held on the appeal, much less when the court would render a decision. Kalshi also cannot control whether the SJC would grant a petition for further appellate review, if applicable. Ultimately, while Kalshi is prepared to notice its appeal promptly and agree to an expedited schedule in the

relevant appellate court, the timing of briefing and argument in all state-level appeals is beyond the control of the parties. Further, Kalshi should not be expected to surrender any element of its appellate rights—including its right to seek review of any intermediate appellate decision—in exchange for an agreed partial stay of the PI Order.

2. Seven-day compliance period following any affirmance of PI Decision (CW Resp. at 2 ¶ 2): In light of the complexity and expense of developing and implementing geolocation technology, this condition would effectively require Kalshi to pre-comply with the terms of the proposed PI Order during the “stay” period, incurring millions of dollars in (non-recoverable) expense. Under such a structure, the stay of the PI Order would not actually protect Kalshi against irreparable harm in the event the appellate courts determine that the preliminary injunction motion was improvidently granted. This is a stay in name only.

3. Geofencing for 18- to 21-year-olds (CW Resp. at 2 ¶ 3): The condition that Kalshi “expeditiously develop and adopt geofencing technology” during the stay period likewise amounts to a stay in name only. CW Resp. at 2 ¶ 3. The issue is not Kalshi’s ability to identify users by age; the company maintains that information as part of the KYC process and to enforce its governing age restrictions. Rather, in order to prevent such users from trading sports event contracts while located in Massachusetts, Kalshi would need to develop the same technology that would be necessary to comply with the PI Order’s core mandate more generally. Kalshi would thus suffer the same irreparable harm—the millions of dollars in (non-recoverable) expense that could all be for naught if Kalshi succeeds on appeal—to say nothing of the reputational harm and regulatory risk associated with affirmatively treating Massachusetts-based users differently from other users around the country. *See* Sottile Decl. ¶¶ 58-61.

4. **Maintenance of current “player protections” (CW Resp. at 2 ¶ 4):** As Kalshi has already indicated to the Commonwealth, Kalshi is willing to maintain its current responsible trading tools for Massachusetts residents during the stay period.¹ *See Responsible Trading Hub*, Kalshi Help Center, help.kalshi.com/account/responsible-trading-hub; <https://perma.cc/N6WU-QQKG>.

¹ Kalshi regularly evaluates and expands these resources. For example, Kalshi recently announced a new partnership with Birches Health to provide professional support and resources for users who may benefit from additional guidance around trading behavior and financial decision-making. *See Responsible Trading Hub*, Kalshi Help Center, <https://perma.cc/N6WU-QQKG>. Birches Health offers confidential support services that help users maintain healthy relationships with trading and financial activities. *Id.*

Respectfully submitted,

Dated: January 23, 2026

KalshiEX LLC

By its attorneys,

/s/ Kristyn DeFilipp

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CERTIFICATE OF SERVICE

I hereby certify that on January 23, 2026, I served the above document on all counsel of record for the parties by email.

/s/ Jack C. Smith

Jack C. Smith