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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 KalshiEX LLC,
10 Plaintiff,

11 v.

12 Jackie Johnson, et al.,
13 Defendants.
14

No. CV-26-01715-PHX-MTL

ORDER

15 This Order addresses Consolidated Plaintiffs United States and Commodity Futures
16 Trading Commission’s (collectively, the “CFTC”) Motion for Temporary Restraining
17 Order and Preliminary Injunction (Doc. 49). The CFTC seeks temporary and preliminary
18 relief enjoining Defendants from prosecuting actions related to event contracts listed on
19 CFTC-regulated Designated Contract Markets (“DCM”). (Doc. 49-1 at 2.)

20 **I.**

21 The Court must first determine that certain threshold issues are satisfied.

22 1. The Court finds that the CFTC has standing to sue to enjoin enforcement of
23 preempted state laws. “[T]he general rule [is] that the United States may sue to protect its
24 interests.” *Wyandotte Transp. Co. v. United States*, 389 U.S. 191, 201 (1967). The CFTC
25 may sue to enjoin the enforcement of preempted state law, as the United States has done in
26 prior suits. *See United States v. Sup. Ct. of N.M.*, 839 F.3d 888, 906 n.9 (10th Cir. 2016)
27 (citing *Armstrong v. Exceptional Child Ctr., Inc.*, 575 U.S. 320, 325-27 (2015)) (finding
28 “in favor of . . . permitting the United States to invoke preemption in order to protect its

1 interest”); *see also United States v. Arizona*, 567 U.S. 387, 416 (2012) (affirming in part a
 2 preliminary injunction barring enforcement of preempted state law).

3 2. The Court is not compelled to abstain under *Younger v. Harris*, 401 U.S. 37
 4 (1971), since the United States is a party. *See United States v. Morros*, 268 F.3d 695, 699,
 5 707-08 (9th Cir. 2001).

6 3. The Anti-Injunction Act, 28 U.S.C. § 2283, does not bar this Court from
 7 enjoining the state court proceedings because the United States and the CFTC are the
 8 parties seeking injunctive relief. *Sec. & Exch. Comm’n v. Wencke*, 577 F.2d 619, 623
 9 (9th Cir. 1978).

10 4. Defendants’ asserted laches defense does not apply to the CFTC. *See United*
 11 *States v. Summerlin*, 310 U.S. 414, 416 (1940) (“It is well settled that the United States is
 12 not . . . subject to the defense of laches in enforcing its rights.”). Even if it did, the Court
 13 finds that the CFTC’s mere delay of weeks to file its Motion is not unreasonable, and
 14 Defendants have provided no argument that they were prejudiced.

15 II.

16 To grant a temporary restraining order, the Court must consider the factors outlined
 17 in *Winter v. Natural Resources Defense Council, Inc.*, 555 U.S. 7, 20 (2008). *See Stuhlbarg*
 18 *Int’l Sales Co., Inc. v. John D. Brush & Co., Inc.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001)
 19 (holding that the standard for issuing a temporary restraining order is the same as that for
 20 a preliminary injunction).

21 1. The Court finds that the CFTC has made a clear showing that it is likely to
 22 succeed on the merits of its claim that Arizona’s gambling laws are preempted by the
 23 Commodity Exchange Act (“CEA”). *Accord KalshiEX, LLC v. Flaherty*, — F.4th —, 2026
 24 WL 924004 (3d Cir. Apr. 6, 2026).

25 The CFTC has sufficiently demonstrated that event contracts fall within the CEA’s
 26 definition of “swaps,” 7 U.S.C. § 1a(47)(A)(ii). The Act defines a “swap” as “any
 27 agreement, contract, or transaction . . . that provides for any purchase, sale, payment, or
 28 delivery . . . that is dependent on the occurrence, nonoccurrence, or the extent of the

1 occurrence of an event or contingency associated with a potential financial, economic, or
 2 commercial consequence.” *Id.* Event contracts, which are based on the occurrence or
 3 nonoccurrence of a specified future event, are associated with financial, economic, or
 4 commercial consequences. This finding is not boundless. It is constrained by a limiting
 5 principle that recognizes only those downstream financial consequences that are direct and
 6 proximate to the underlying event, as reflected by the examples provided by the CFTC on
 7 the record.

8 The CFTC has demonstrated a reasonable chance of success in showing that the
 9 Act, at a minimum, field preempts Arizona law. The Act grants the CFTC “exclusive
 10 jurisdiction” over the regulation of “swaps . . . traded or executed on a [DCM].” 7
 11 U.S.C. § 2(a)(1)(A). This Court agrees with and adopts the view that if “event contracts are
 12 swaps under the Act, . . . the scope of field preemption [is] the regulation of trading on a
 13 DCM.” *Flaherty*, 2026 WL 924004, at *4. Defendants’ enforcement of Arizona’s gambling
 14 laws therefore violates the Supremacy Clause of the United States Constitution, U.S. Const.
 15 art. VI, cl. 2, due to the CFTC’s exclusive jurisdiction over DCMs.

16 2. The Court finds that the CFTC has clearly shown that it will suffer irreparable
 17 harm absent an injunction. A violation of the Supremacy Clause itself creates a
 18 presumption of irreparable harm. *See United States v. California*, 921 F.3d 865, 893 (9th
 19 Cir. 2019) (“[P]reventing a violation of the Supremacy Clause serves the public interest.”).
 20 The United States Supreme Court confirmed this proposition in *Arizona*, 567 U.S. at 416,
 21 where the Court affirmed in part a preliminary injunction issued based on a finding of
 22 irreparable harm that would be caused by the enforcement of preempted state law.

23 3. The Court finds that the balance of equities favors the CFTC and that a
 24 temporary restraining order is in the public’s interest. *See Leiva-Perez v. Holder*, 640 F.3d
 25 962, 970 (9th Cir. 2011) (citing *Nken v. Holder*, 556 U.S. 418, 435 (2009)) (holding that
 26 the balance of equities and public interest factors “merge where, as is the case here, the
 27 government is the opposing party”). “[I]t would not be equitable or in the public’s interest
 28 to allow the state to continue to violate the requirements of federal law.” *Cal. Pharmacists*

1 *Ass'n v. Maxwell-Jolly*, 563 F.3d 847, 852-53 (9th Cir. 2009), *vacated and remanded on*
 2 *other grounds sub nom.*, *Douglas v. Indep. Living Ctr. of S. Cal.*, 565 U.S. 606 (2012).

3 4. The Court finds that there is no adequate remedy at law. *See Morales v. Trans*
 4 *World Airlines, Inc.*, 504 U.S. 374, 381-83 (1992). Because the CFTC is not a part of the
 5 state court criminal proceedings against Kalshi, it cannot protect its exclusive jurisdiction
 6 over Kalshi's DCM.

7 For these reasons, the Court finds that the *Winter* factors are satisfied, so it will grant
 8 the CFTC's Motion (Doc. 49).

9 The Court will not require the CFTC to post bond because "[t]he United States, its
 10 officers, and its agencies are not required to give security." Fed. R. Civ. P. 65(c).

11 **IT IS THEREFORE ORDERED** that the CFTC's Motion (part of Doc. 49) is
 12 **GRANTED** insofar as it requests a temporary restraining order. The Motion for
 13 Preliminary Injunction (part of Doc. 49) remains pending.

14 **IT IS FURTHER ORDERED** that, pursuant to Federal Rule of Civil Procedure
 15 65, Defendants are temporarily enjoined and restrained from enforcing Arizona's gambling
 16 laws, A.R.S. §§ 5-1301 *et seq.*, through any criminal or civil enforcement actions related
 17 to event contracts listed on CFTC-regulated DCMs.

18 **IT IS FINALLY ORDERED** that this Temporary Restraining Order will remain
 19 in effect until **April 24, 2026, at 11:59 p.m., (Arizona time)**.

20 Dated this 10th day of April 2026.

21
 22 /s/ Michael T. Liburdi
 23 United States District Judge
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