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COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

**SUPERIOR COURT
CIVIL ACTION
NO. 2584CV02525**

COMMONWEALTH OF MASSACHUSETTS

vs.

KALSHIEX, LLC

**ORDER CONCERNING PRELIMINARY INJUNCTION AND DEFENDANT'S
MOTION FOR A STAY PENDING APPEAL**

1. Form of Preliminary Injunction

Following my January 20, 2026, decision, and the hearing on January 23, 2026, I issued an order on January 27, 2026, reflecting the contours of the preliminary injunction that I intended to issue prohibiting KalshiEX, LLC ("Kalshi") from continuing to offer sports wagering in Massachusetts absent the license required by G.L. c. 23N. I also asked the parties to confer to see if they could reach agreement on certain details. After conferring, on February 5, 2026, the parties submitted a joint status report together with a proposed form of preliminary injunction. Because the proposed preliminary injunction adheres to the guidance I provided in my January 27, 2026, order, and appropriately implements my January 20, 2026, decision, I have entered that proposed order as the Preliminary Injunction in this action, effective today—Friday, February 6, 2026. By conferring with the Commonwealth as requested, Kalshi did not waive any rights and reserves its comprehensive objection to the Preliminary Injunction and my prior decision.

2. Kalshi's Motion to Stay Preliminary Injunction Pending Appeal

Kalshi moves to stay the Preliminary Injunction while it appeals the January 20, 2026, decision and order. The Commonwealth opposes a stay.

An appellant seeking a stay pending appeal ordinarily must satisfy four criteria: "(1) the likelihood of appellant's success on the merits; (2) the likelihood of irreparable harm to appellant if the court denies the stay; (3) the absence of substantial harm to other parties if the stay issues; and (4) the absence of harm to the public interest from granting the stay." *C.E. v. J.E.*, 472 Mass. 1016, 1017 (2015), quoting J.W. Smith & H.B. Zobel, *Rules Practice* § 62.3, at 409 (2d ed. 2007).

Substantially for the reasons set forth in the Commonwealth's opposition, Kalshi has not satisfied these four requirements. Although I accept that Kalshi's appeal raises meaningful issues

on which recent decisions are divided, the existence of unsettled law does not equate to a likelihood of success on the merits. See *C.E.* , 472 Mass. at 1017 (suggesting that likelihood of success on the merits requires showing that trial court “likely erred or abused her discretion”); *Gaskins v. Hollomon*, No. 2024-J-0086, 2024 WL 1705772, at *2 (Mass. App. Ct. 2024) (Single Justice Dec.).

On the second criterion, Kalshi focuses on the financial consequences of having to conform to Massachusetts law and the Preliminary Injunction, but “economic loss alone does not usually rise to the level of irreparable harm which a party must establish to obtain a preliminary injunction.” *Hull Mun. Lighting Plant v. Massachusetts Mun. Wholesale Elec. Co.*, 399 Mass. 640, 643 (1987); *Caffyn v. Caffyn*, 70 Mass. App. Ct. 37, 42 (2007) (same). Rather, a determination of irreparable harm generally requires a showing, beyond mere speculation, that the injunction will “threaten the very existence” of the business. *Hull Mun. Lighting Plant*, 399 Mass. at 643-644. The record before me does not credibly establish that complying with the Preliminary Injunction will irreparably threaten Kalshi’s business, or that any unrecoverable monetary damage that it may incur to comply with the Preliminary Injunction outweighs the Commonwealth’s substantial interest in licensing and regulating all state sports gaming operators.

Further, the preliminary injunction is tailored to mitigate harm to Kalshi’s business by: (i) applying only prospectively (and not interfering with existing “contracts”); and (ii) providing thirty days for implementation (forty-seven days from my initial decision). Moreover, Kalshi adopted its business model—relying on CFTC regulation of “swaps” to offer nationwide sports betting in contravention of state gaming laws—with eyes wide open; it plainly must have appreciated the risk—or likelihood—of an order like this Preliminary Injunction. Being a sophisticated entity, it presumably prepared for that risk.

Because of the thirty-day period for implementation in the Preliminary Injunction, Kalshi’s alternative request for a short stay to provide time to request a stay from the Appeals Court is unnecessary. Kalshi is, of course, welcome to seek a stay from the Appeals Court, which presumably can be decided within the implementation period.

ORDER

The preliminary injunction in the form proposed by the Commonwealth, attached, is entered as a Preliminary Injunction, effective today—Friday, February 6, 2026. Kalshi’s motion for a stay of the Preliminary Injunction while its appeal is pending is denied.

So ordered.



Christopher K. Barry-Smith
Justice of the Superior Court

DATE: February 6, 2026