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9
10 **UNITED STATES DISTRICT COURT**
11 **DISTRICT OF NEVADA**

12 KALSHIEX, LLC,
13 Plaintiff,

14 vs.

15 KIRK D. HENDRICK, in his official
capacity as Chairman of the Nevada
16 Gaming Control Board; GEORGE ASSAD,
in his official capacity as a Member of the
17 Nevada Gaming Control Board;
CHANDENI K. SENDALL, in her official
18 capacity as a Member of the Nevada
Gaming Control Board; NEVADA
19 GAMING CONTROL BOARD; JENNIFER
TOGLIATTI, in her official capacity as
20 Chair of the Nevada Gaming Commission;
ROSA SOLIS-RAINEY, in her official
21 capacity as a Member of the Nevada
Gaming Commission; BRIAN KROLICKI,
22 in his official capacity as a Member of the
Nevada Gaming Commission; GEORGE
23 MARKANTONIS, in his official capacity as
a Member of the Nevada Gaming
24 Commission; ABBI SILVER, in her official
capacity as a Member of the Nevada
25 Gaming Commission; NEVADA GAMING
COMMISSION; AARON D. FORD, in his
26 official capacity as Attorney General of
Nevada,

27 Defendant(s).
28

Case No. 2:25-cv-00575-APG-BNW

**DEFENDANTS' OPPOSITION TO
PLAINTIFF'S EMERGENCY
MOTION TO STAY DISCOVERY**

1 **DEFENDANTS’ OPPOSITION TO PLAINTIFF’S EMERGENCY MOTION TO**
2 **STAY DISCOVERY**

3 Defendants, by and through their attorneys of record, hereby file their Opposition to
4 Plaintiff’s Emergency Motion to Stay Discovery (“Emergency Motion”). This Opposition is
5 based on the following Memorandum of Points and Authorities, the pleadings and papers
6 on file herein, and any oral argument this Court may allow.

7 **MEMORANDUM OF POINTS AND AUTHORITIES**

8 **INTRODUCTION**

9 As recently as June 25, 2025, Plaintiff KalshiEX, LLC’s (“Kalshi”) CEO has made
10 public statements boasting about Kalshi’s \$2 billion valuation, based largely on the
11 “explosion” of event contracts offered on its platform over the past ten months or so. *See*
12 **Exhibit A**. Yet Kalshi would have this Court believe that participating in limited and
13 expedited discovery in this case—a case it affirmatively filed to obtain a judicial
14 endorsement to continue operating in violation of Nevada state gaming law—would cause
15 it such severe harm that this Court’s emergency intervention is required. Kalshi could have
16 preserved financial resources by waiting to address the need for discovery in response to
17 Defendants’ inevitable forthcoming Rule 56(d) request. Instead, Kalshi opted to expend
18 additional legal fees to file the Emergency Motion, jamming the Court’s docket and putting
19 pressure on Defendants to defend against a needlessly time-sensitive motion. The
20 Emergency Motion can be denied on the ground that no emergency exists whatsoever.

21 The Emergency Motion also should be denied on the merits. Kalshi asserts that no
22 discovery is necessary to resolve this case, because the principal issue is one of preemption.
23 But to decide whether Nevada’s gaming laws are preempted, the Court will need to know
24 key facts about Kalshi’s products—and none of those facts have been developed. Although
25 preemption questions sometimes are resolved on stipulated facts, the parties here have not
26 agreed to the necessary facts. Kalshi, in effect, asks this Court to enjoin Defendants from
27 regulating its gaming operations—a traditional area of state regulation—based on only its
28 version of the facts, without giving Defendants the opportunity to verify, through discovery,

1 any of its allegations or to challenge any of its evidence. Kalshi also seeks to prevent
2 Defendants from discovering facts that would support their affirmative defenses,
3 particularly their equitable defenses raised in response to Kalshi’s request for a permanent
4 injunction. Essentially, Kalshi wants to rush this litigation through to conclusion without
5 affording Defendants or this Court the opportunity to discover facts about it, all while
6 claiming that the cost of discovery will be so burdensome and harmful to it that it needs a
7 decision within days.

8 That is not how the adversarial system works; one side does not simply get to declare
9 what the facts are and then ask the Court to enter judgment. And this Court should be
10 especially wary to allow such a rush to judgment here, where important state sovereign
11 interests are at stake. The Court has already entered an expedited discovery schedule that
12 appropriately balances the interests of both parties. There is no emergency here and no
13 reason to preclude all discovery. The Court should deny the Emergency Motion.

14 **FACTUAL AND PROCEDURAL HISTORY**

15 According to Kalshi’s Complaint, on January 24, 2025, Kalshi “self-certified and
16 began listing sports-related contracts on its exchange[.]” ECF No. 1, ¶ 53. Not long
17 thereafter, on March 4, 2025, the Nevada Gaming Control Board (“NGCB”) sent a cease-
18 and-desist letter to Kalshi’s CEO and Chief Regulatory Officer/General Counsel, alerting
19 Kalshi to the fact that Kalshi was in violation of Nevada gaming law and demanding that
20 Kalshi cease offering sports- and political-event contracts in Nevada. *Id.*, ¶¶ 55–58. Rather
21 than comply with the law, on March 28, 2025, Kalshi filed its Complaint in the instant
22 action. *See generally Id.*

23 Contemporaneously with the filing of its Complaint, Kalshi filed a Motion for
24 Temporary Restraining Order and Preliminary Injunction. ECF No. 18. In support of that
25 Motion, Kalshi submitted the Declaration of Xavier Sottile, Kalshi’s Head of Markets,
26 which contained fifty paragraphs describing the “harm that Kalshi and its users will incur
27 unless the Court immediately prevents the [NGCB] from enforcing its demand that Kalshi
28 ‘immediately cease and desist from offering any event-based contracts in Nevada.’” ECF

1 No. 18-1, ¶ 4. The Court, after a hearing, ultimately granted Kalshi’s Motion for
2 Preliminary Injunction, enjoining Defendants from enforcing state gaming laws against
3 Kalshi on a preliminary basis. ECF No. 45.

4 Relevant to this Motion, the Court at the hearing on Kalshi’s Motion for Preliminary
5 Injunction indicated that “some brief discovery” may be warranted. The Court identified as
6 potential topics for discovery how much money Kalshi makes, the percentage of earnings
7 attributed to Nevada contracts compared to the overall value of the company, and what
8 other damages Kalshi may suffer if made to comply with Nevada gaming law.

9 On April 23, 2025, Defendants filed a Motion to Dismiss the Complaint, which the
10 Court ultimately denied. *See* ECF No. 50; ECF No. 72. On July 1, 2025, Defendants filed
11 their Answer and Affirmative Defenses. ECF No. 78.

12 On July 2, 2025, the parties submitted their Discovery Plan and Scheduling Order.
13 ECF No. 79. Although Kalshi’s prefatory statement stated its belief that no discovery is
14 necessary and stated that Kalshi would file a motion for summary judgment no later than
15 August 1, 2025, *Id.*, p. 2, the parties submitted, and the Court approved, deadlines for fact
16 and expert discovery to allow Defendants and Intervenor-Defendants to take discovery on
17 a limited range of topics, *See Id.*, pp. 5–6; ECF No. 80 (Order Granting Discovery Plan and
18 Scheduling Order).

19 On August 1, 2025, Defendants served Kalshi with initial discovery requests, which
20 include ten interrogatories and ten requests for production of documents. **Exhibit B**;
21 **Exhibit C**. That same day, Kalshi filed both its Motion for Summary Judgment, which is
22 supported by a Declaration and ten exhibits, ECF No. 86; ECF Nos. 86-1–86-12, and the
23 instant Emergency Motion, ECF No. 87.

24 ARGUMENT

25 Kalshi’s Emergency Motion to Stay Discovery should be denied. Kalshi seeks truly
26 extraordinary relief—to prevent Defendants from taking any discovery to challenge its
27 version of the facts. It has not come close to justifying that relief.

28 ///

1 First, the “emergency” identified by Kalshi’s counsel in his Declaration is not, in
2 reality, an emergency. This case already is expedited, and Kalshi already has obtained a
3 preliminary injunction; there is no emergency here. Second, Kalshi’s pending Motion for
4 Summary Judgment—the basis for its request to stay discovery—cannot be resolved
5 without affording Defendants the opportunity to conduct discovery. Kalshi cannot simply
6 declare what the facts are and demand that this Court decide the case based on those facts.

7 **I. Kalshi Has Not Shown Circumstances Warranting Emergency Relief**

8 Although this District’s Local Rules permit the filing of emergency motions, such
9 motions “should be rare” because of the “numerous problems they create for the opposing
10 party and the court in resolving them.” LR 7-4(b); *Cardoza v. Bloomin’ Brands, Inc.*, 141 F.
11 Supp.3d 1137, 1140 (D. Nev. 2015). This Court is entrusted with the determination of
12 “whether any matter submitted as an ‘emergency’ is, in fact, an emergency.” LR 7-4(c). “For
13 a motion to be an ‘emergency’ to a federal court, the situation typically must involve some
14 significant degree of urgency, severity, and irreparability[.]” *Goldberg v. Barreca*, No. 2:17-
15 cv-2106-JCM-VCF, 2017 WL 3671292, at *5 (D. Nev. Aug. 24, 2017).

16 In *Snow Covered Capital, LLC v. Fonfa*, Case No. 2:22-cv-01181-CDS-BNW, 2023
17 WL 3884631, at *3 (D. Nev. June 8, 2023), a court in this District denied an emergency
18 motion to stay a case where the defendant argued that the case was duplicative of a related
19 pending case and that she would be required to engage in overlapping expert discovery.
20 The court denied the emergency motion to stay, finding that the defendant only
21 “perfunctorily address[ed] the emergency nature of this motion, and she [did] not provide
22 sufficient justification for it.” *Id.* The court went on to state that “[w]hether there is an
23 overlap of the experts in this case and [the related case] simply does not amount to an
24 emergency.” *Id.*

25 In deciding, and denying, an emergency motion for reconsideration of the court’s
26 orders denying motions for temporary restraining order and preliminary injunction,
27 another court in this District found that the purported emergency, “[a] business
28 relationship gone sour—even where plaintiffs risk losing money or risk loss of partnership

1 rights in the short term—without more,” did not constitute an emergency. *Goldberg*, 2017
2 WL 3671292, at *5. Indeed, the court continued, there was nothing to justify “this court
3 setting aside the court’s hundreds of other important, earlier-filed matters to immediately
4 address this matter.” *Id.*

5 Here, Kalshi already has obtained a preliminary injunction, which prevents
6 Defendants from regulating their products for the time being. So, all Kalshi can claim for
7 its supposed emergency is that it “will be forced to engage in costly discovery in a case
8 involving preempted state laws.” ECF No. 87, p. 2; *See also* ECF No. 87-2, ¶ 3(a) (“The bulk
9 of the benefits of a stay of discovery would be lost unless the motion is addressed
10 expeditiously.”). This perfunctory explanation of Kalshi’s claimed emergency is insufficient
11 to show the “urgency, severity, and irreparability” required by our Local Rules. *See*
12 *Goldberg*, 2017 WL 3671292, at *5.

13 Moreover, discovery is a normal and expected part of litigation, and the parties have
14 already agreed to an expedited discovery schedule (with discovery concluding by the end of
15 October). *See* ECF No. 79. So, the period for discovery, and costs of discovery, necessarily
16 are limited. That expedited schedule reflects a careful balancing of the need to discover the
17 necessary facts with the desire of both sides to resolve this case quickly.

18 Further, Kalshi’s claim of harm is that it has to go through the normal adversarial
19 process to develop the facts. But being forced to prove the facts supporting a claim is not
20 harm; it is the adversarial process. Kalshi essentially asks the Court to just accept the facts
21 as Kalshi has alleged them and decide the case based on those facts. As the party filing the
22 Complaint, invoking the jurisdiction of this Court and haling Nevada agencies and officials
23 into court, Kalshi cannot seriously expect to evade all discovery and jump straight to
24 resolution on the merits in its favor.

25 Further, there is no urgency or severe irreparable harm from discovery. Defendants
26 served discovery requests on Kalshi on August 1, 2025. *See Ex. B; Ex. C.* Responses to
27 those requests are due thirty days from service, or August 31, 2025. Were Kalshi’s
28 Emergency Motion to have been heard in the ordinary course, it is entirely possible that it

1 would have been heard before responses were due. *See* LR 7-2(b) (allowing 14 days for
2 response to an ordinary motion and 7 days for reply).

3 Defendants' currently outstanding discovery requests total twenty: ten
4 interrogatories and ten requests for production. *See Ex. B; Ex. C.* Intervenor-Defendants
5 have not yet pursued any discovery. Although additional discovery is expected over the
6 next several months, there is no reason to expect that Defendants or Intervenor-
7 Defendants will pursue an unusually burdensome amount of discovery—particularly in
8 light of the expedited schedule.

9 And, as a company that has valued itself at roughly \$2 billion in recent months, *See*
10 **Ex. A**, participating in limited discovery over the course of roughly three months is simply
11 not severe. The potential financial burden here on Kalshi, a \$2-billion company, is *de*
12 *minimis*. And this is not irreparable harm; financial loss alone is not a basis for emergency
13 relief. *See Goldberg*, 2017 WL 3671292, at *5. Further, this claimed harm must be viewed
14 in light of the extraordinary intrusion on state sovereignty that Kalshi seeks in this case—
15 an order permanently enjoining the State from regulating in an area of traditional state
16 authority.

17 Kalshi should not be allowed to manufacture an emergency to try to put pressure on
18 Defendants and rush this Court to judgment. The Emergency Motion can and should be
19 denied on this ground alone.

20 **II. Additional Discovery Is Necessary to Resolve Kalshi's Pending Motion for**
21 **Summary Judgment**

22 “The Federal Rules of Civil Procedure do not provide for automatic or blanket stays
23 of discovery when a potentially dispositive motion is pending.” *Tradebay, LLC v. eBay, Inc.*,
24 278 F.R.D. 597, 601 (D. Nev. 2011). The decision of whether to stay discovery is within the
25 sound discretion of the district court. *Catalystix Inc. v. Legacy Creative Inc.*, No. 21-cv-
26 01253-JCM-EJY, 2022 WL 1694587 at *2 (D. Nev. Mar. 17, 2022) (citing *Little v. City of*
27 *Seattle*, 863 F.2d 681, 685 (9th Cir. 1988)). In exercising its discretion, “[a] court must
28 consider whether the pending motion is potentially dispositive of the entire case, and

1 whether that motion can be decided without additional discovery.” *Catalystix*, 2022 WL
2 1694587 at *2 (citing *Tradebay*, 278 F.R.D. at 602).

3 First, Kalshi is wrong to say that preemption questions do not require discovery.
4 Second, Defendants here are entitled to discovery to test Kalshi’s legal theory and its
5 entitlement to relief. Third, Defendants are entitled to discovery that would aid them in
6 proving their affirmative defenses. Had Kalshi gone through the proper procedure and not
7 rushed to file this Emergency Motion, Defendants would have explained all of these points
8 in their opposition to Kalshi’s Motion for Summary Judgment, which would have included
9 a Rule 56(d) request that the Court deny or defer ruling on the Motion for Summary
10 Judgment until Defendants could take discovery. Kalshi’s procedural games, however,
11 require Defendants to make many of the arguments it would present in a Rule 56(d) request
12 in response to the Emergency Motion.

13 **A. Preemption Questions Are Not Categorically Immune from Discovery**

14 Kalshi’s argument with respect to why no discovery is warranted here boils down to
15 the overly simplistic argument that “Kalshi’s preemption claim presents purely legal
16 questions that require no further factual development.” ECF No. 87, p. 5. But no authority
17 holds that discovery is precluded in cases involving preemption. If the relevant facts are
18 undisputed, then perhaps discovery is not necessary. But this case is not close to that point;
19 all the Court has is Kalshi’s assertions of fact (in the Complaint and Statement of
20 Undisputed Materials Facts); Defendants have had no opportunity to test those facts or
21 develop their own facts. Kalshi does not cite any case holding that that a court should decide
22 an important issue like preemption based on one party’s one-sided view of the facts, without
23 any opportunity for the other party to contest those facts.

24 Kalshi cites *Hawaii Newspaper Agency v. Bronster*, 103 F.3d 742, 746 (9th Cir. 1996),
25 where the Ninth Circuit held that a newspaper’s preemption challenge was ripe (an issue
26 not present here), but there the appellate court was evaluating **cross-motions** for
27 summary judgment. The issue of whether discovery was necessary was not at play, as both
28 sides apparently agreed that the case could be decided at summary judgment without

1 further discovery. Kalshi’s string cite of additional cases also does not show that
2 preemption necessarily should be decided without discovery; as Kalshi itself recognizes,
3 those holdings depend on the particular facts of those cases:

4 *In re Bard IVC Filters Prod. Liab. Litig.*, 969 F.3d 1067, 1073 (9th
5 Cir. 2020) (“the preemption issue **here** presents a purely legal
6 question”); *Atay*, 842 F.3d at 698 (“preemption is **predominantly**
7 a legal question”); *ReadyLink Healthcare, Inc. v. State Comp. Ins.*
8 *Fund*, 754 F.3d 754, 761 (9th Cir. 2014) (“Preemption is **almost**
9 **always** a legal question”); *Sayles Hydro Assocs. v. Maughan*, 985
F.2d 451, 454 (9th Cir. 1993) (field preemption is “purely legal”);
Pac. Gas & Elec., 461 U.S. at 201 (the “question of preemption is
predominantly legal”).

10 ECF No. 87, pp. 6–7 (emphasis added). Indeed, only one of Kalshi’s cited cases dealt with a
11 Rule 56(d) motion for additional discovery. *See Atay v. Cty. of Maui*, 842 F.3d 688, 698 (9th
12 Cir. 2016). The rest dealt with a preemption defense raised in a pre-trial summary
13 judgment motion, *In re Bard*, 969 F.3d at 1072, the preclusive effect of an argument with
14 respect to the need for discovery on a preemption claim, *ReadyLink*, 754 F.3d at 761, and
15 challenges to consideration of a preemption claim on ripeness grounds, *Sayles Hydro*, 985
16 F.2d at 453–54; *Pacific Gas and Elec.*, 461 U.S. at 200–02. None of these were cases where
17 the parties disagreed about the need for discovery and the court simply accepted one party’s
18 view of the facts and precluded discovery.

19 Case law not cited by Kalshi recognizes that there are many instances where factual
20 development is needed to answer preemption questions. For example, in a multidistrict
21 litigation involving claims for personal injuries and/or wrongful death allegedly caused by
22 incretin-based treatments prescribed for type 2 diabetes, a federal district court considered
23 the defendants’ motion for summary judgment arguing that plaintiffs’ state law causes of
24 action were preempted by federal law. *In re Incretin Mimetics Prods. Liability Litig.*, MDL
25 Case No. 13md2452 AJB (MDD), 2014 WL 2532315, at *1–3 (S.D. Cal. Jun. 4, 2014). The
26 plaintiffs requested Rule 56(d) relief, asserting that it needed to discover, *inter alia*, “what
27 Defendants provided to the FDA regarding the association [between incretin drugs and
28 pancreatic cancer]; and . . . what Defendants withheld from the FDA.” *Id.*, at *3. In its

1 analysis, the court recognized that, “[a]s it stands now, given that Plaintiffs lack the
2 complete set of relevant evidence, it would be difficult for Plaintiffs to fully substantiate
3 their position on the preemption issue.” *Id.* Because it was “conceivable that the existence
4 of the documents sought will support Plaintiffs’ position in opposing Defendants’ summary
5 judgment based on federal preemption,” the court granted the Rule 56(d) request. *Id.*

6 Likewise, in *Southwest Key Programs, Inc. v. City of Escondido*, No. 3:15-cv-01115-
7 H-BLM, 2017 WL 1094001, at *9 (S.D. Cal. Mar. 23, 2017), the district court denied the
8 defendants’ motion for summary judgment on the plaintiff’s Supremacy Clause claim
9 without prejudice and noted that “[p]reemption may be an issue of law, but further
10 development of the record should assist the Court in its decision on the Supremacy Clause.”
11 *See also Sanchez v. Lasership, Inc.*, No. 1:12cv246 (GBL/TRJ), 2012 WL 3730636 at *1 (E.D.
12 Va. Aug. 27, 2012) (denying defendant’s motion for summary judgment and granting
13 plaintiffs’ motion for Rule 56(d) relief because “[w]ithout a pre-ruling opportunity for fair
14 discovery, Plaintiffs will be deprived of a fair opportunity to lodge an effective opposition to
15 [defendant’s] summary judgment motion on the preemption question.”); *Walsh v. Abbott*
16 *Vascular, Inc.*, No. 2:09-cv-03474-MCE-GGH, 2011 WL 2038572, at *4 (E.D. Cal May 23,
17 2011) (declining to reach Rule 56(d) issue but stating court was “inclined to grant” plaintiff’s
18 Rule 56(d) request in face of defendant’s summary judgment motion raising preemption
19 defense).

20 In sum, the legal nature of a preemption claim does not categorically foreclose
21 discovery. Preemption depends on the relevant facts, and here, the facts have not yet been
22 developed. There is no set of agreed-upon facts at this point and therefore no basis to finally
23 decide the preemption issue. Defendants should be given the opportunity to conduct
24 discovery on both Kalshi’s allegations and on facts relevant to Defendants’ affirmative
25 defenses.

26 **B. Defendants Are Entitled to Discovery on Kalshi’s Allegations**

27 Discovery is particularly warranted here, because Kalshi is asking this Court to
28 accept its allegations as true without permitting Defendants to test those allegations

1 through discovery. Kalshi’s claim, in its simplest form, is that (1) the CFTC has “exclusive
2 jurisdiction” over designated contract markets, or DCMs; (2) Kalshi is a DCM; and,
3 therefore, (3) Nevada can exercise no jurisdiction over Kalshi. *See generally* ECF No. 1.
4 Although the question whether the CFTC’s “exclusive jurisdiction” over DCMs precludes
5 state regulation may very well be primarily legal, Kalshi’s status as a DCM, its self-
6 certification of its so-called event contracts, and many other factual allegations in the
7 Complaint are factual in nature and require discovery to be tested.

8 Kalshi’s Complaint contains seventy paragraphs of factual and legal allegations. *See*
9 *generally* ECF No. 1. Notably, as to **twenty-five** of those paragraphs, Defendants “lack
10 knowledge sufficient to form a belief about the truth of the allegations” of all or part of a
11 given paragraph. *See* ECF No. 78, ¶¶ 5, 7, 9, 13, 25–31, 39–40, 42–54. The factual
12 allegations for which Defendants lack sufficient information include:

- 13 • “Kalshi is a federally designated and approved derivatives exchange It offers
14 consumers the chance to invest in many types of event contracts, including, as
15 relevant here, political-outcome contracts and sports-outcome contracts. Two
16 months ago, the CFTC allowed Kalshi’s sports-outcome contracts to take effect
17 without review.” ECF No. 1, ¶ 5.
- 18 • “Kalshi is unaware of no other exchange regulated by the CFTC subject to state law
19 in Nevada or any other state.” *Id.*, ¶ 7.
- 20 • “Shutting down its event contracts in Nevada would threaten Kalshi’s viability and
21 require devising complex technological solutions whose feasibility is entirely
22 untested and unclear. Defendants’ acts would also impair Kalshi’s existing contracts
23 with consumers, subject Kalshi’s users to uncertainty and loss, and undermine
24 confidence in the integrity of Kalshi’s platform.” *Id.*, ¶ 9.
- 25 • “The value of an event contract is determined by market forces. An event contract’s
26 price will fluctuate between the time of its creation and the expiration date in
27 accordance with changing market perceptions about the likelihood of the event’s
28 occurrence. During that period, individuals can buy and sell the contract at its

1 fluctuating prices. The ultimate value of an event contract is determined at its
2 expiration date.” *Id.*, ¶ 27.

- 3 • “Event contracts are a valuable means to hedge risk against event-driven volatility.
4 Event contracts reflect real-time risk assessment and thus provide a nuanced and
5 finely tuned opportunity for traders to mitigate their exposure on real-world events
6 in an uncertain market.” *Id.*, ¶ 29.
- 7 • “Event contracts are also valuable means of communicating information to the
8 general public because contract prices reflect prevailing market opinions and
9 conditions. Prediction markets thus serve as sensitive information-gathering tools
10 that can provide insights for stakeholders—including businesses, individuals,
11 governments, and educational institutions. The data that is generated through
12 prediction markets can also help to set rates and prices for assets whose value
13 depends on the occurrence or non-occurrence of the underlying event.” *Id.*, ¶ 31.

14 Kalshi’s Complaint also recites a detailed history of the CFTC’s certification of
15 Kalshi as a DCM, Kalshi’s event contract offerings, including sports- and political-event
16 contracts, and Kalshi’s ongoing interactions with the CFTC regarding its authorization, or
17 lack thereof, for Kalshi to offer such event contracts. *See Id.*, ¶¶ 42–54. Many of these
18 factual allegations are essential to Kalshi’s theory that it can facilitate gaming without
19 state regulation, yet Defendants are not able to ascertain the veracity of the allegations
20 without conducting additional discovery.

21 Indeed, Kalshi appears to recognize that *some* fact development is needed to resolve
22 its claims. It submitted ten exhibits in connection with its motion for summary judgment,
23 including what it represents to be an Order of Designation from the CFTC related to
24 Kalshi’s designation as a DCM, as well as various notifications to the CFTC of Kalshi’s
25 event contract offerings. *See ECF No. 86-3–86-12.* Kalshi in effect asks this Court to take
26 its word that the exhibits are what Kalshi says they are, and to deny Defendants any
27 opportunity to discover additional or countervailing facts. That is not how civil litigation
28 works—under the rules of civil procedure, defendants are entitled to test each of a

1 plaintiff's factual allegations through discovery, and the plaintiff may not unilaterally
2 decide to short-circuit the process through one-sided disclosures. And Kalshi's rush to
3 judgment is particularly inappropriate here, where the parties already have set out a
4 modest and expedited discovery schedules, and where Kalshi's request for a permanent
5 injunction threatens core state sovereign interests.

6 At the appropriate time, i.e., in response to Kalshi's Motion for Summary Judgment,
7 Defendants will make a Rule 56(d) request, supported by declaration, seeking discovery of,
8 among other things, filings and communications with the CFTC regarding Kalshi's
9 designation as a DCM and Kalshi's self-certification of contracts, identification of the
10 financial, commercial, or economic consequences associated with Kalshi's event contracts,
11 and the irreparable harm that Kalshi claims it will suffer if required to comply with Nevada
12 law, including viability of its business and impairment of contracts for its users.
13 Importantly, a party seeking Rule 56(d) relief must only "indicate how the information
14 sought **could** defeat summary judgment, but does not have to prove the discovery it seeks
15 necessarily will do so." *United States v. Real Property and Improvements Located at 2366*
16 *San Pablo Ave., Berkeley, Cal.*, No. 13-cv-02027-JST, 2014 WL 3704041, at *2 (N.D. Cal.
17 Jul. 24, 2014). Further, much of the information that Defendants will attest to in their Rule
18 56(d) request is already the subject of outstanding discovery requests, *See Ex. B; Ex. C*,
19 which will make "[s]ummary denial" of the Rule 56(d) request "especially inappropriate,"
20 *2366 San Pablo Ave.*, 2014 WL 3704041, at *2.

21 The bottom line is that additional discovery is needed to resolve Kalshi's Motion for
22 Summary Judgment, so this Court should reject Kalshi's request for a stay of discovery.

23 **C. Defendants Are Entitled to Discovery on Their Affirmative Defenses**

24 Defendants also need discovery to prove their affirmative defenses. Kalshi seeks a
25 permanent injunction and declaratory relief, both equitable in nature. ECF No. 78. "The
26 universal rule of a court of equity is that he who seeks its equitable interposition must
27 himself do equity." *People's Nat. Bank of Lynchburg v. Marye*, 191 U.S. 272, 280 (1903); *See*
28 30A C.J.S. Equity § 102 ("In order for justice to be done between parties, a party is required

1 to do equity when asking the court to invoke the aid of equity.”). Defendants are entitled to
2 elicit facts through discovery that illuminate their defenses. *See Serby v. First Alert, Inc.*,
3 934 F. Supp. 2d 506, 516 (E.D.N.Y. 2013) (citing *Trs. of Local 464A United Food &*
4 *Commercial Workers Union Pension Fund v. Wachovia Bank, N.A.*, No. 09–cv–668, 2009
5 WL 4138516, at *1 (D.N.J. Nov. 24, 2009)) (“[A] defendant should be permitted to seek
6 discovery to develop the ‘necessary factual background’ for its defenses before ‘a premature
7 evaluation of a defense's merits.”). A court cannot at an early stage conclude that
8 affirmative defenses fail as a matter of law based on the pleadings. *See Jensen v. Thomas*,
9 No. 23-CV-01628-RFL, 2024 WL 5295012, at *2 (N.D. Cal. Aug. 15, 2024) (citing *In re*
10 *Honest Co., Inc. Sec. Litig.*, 343 F.R.D. 147, 153 (C.D. Cal. 2022)).

11 Defendants contend that Kalshi’s facilitating wagering or betting on sports or
12 political events violates Nevada gaming laws. On information and belief, Kalshi has
13 repeatedly described its event contracts as “sports betting” in its marketing materials and
14 digital or print media, only to argue to this Court that its event contracts are not gaming.
15 Further, not even a year ago, Kalshi represented to a federal appellate court that “Congress
16 did not want sports betting to be conducted on derivatives markets.” *KalshiEx, LLC v.*
17 *Commodity Futures Trading Comm’n*, No. 24-5205, Brief of Appellee KalshiEX, LLC, 2024
18 WL 4802698, at *41 (C.A.D.C. Nov. 15, 2024). Yet, now, Kalshi argues to this Court that
19 sports-event contracts, which it openly refers to as “sports betting,” are well within the
20 exclusive jurisdiction of the CFTC. Kalshi’s contradictory statements, conduct, and
21 arguments implicate Defendants’ equitable and judicial estoppel affirmative defenses.
22 Defendants must be permitted to more fully develop those defenses through discovery.

23 Additionally, Kalshi’s revenue compared against geofencing expenses that it
24 espoused were cost prohibitive and its description of the nature and scope of its activities
25 to the CFTC compared to communications to external outlets or other interested parties
26 directly implicates Defendants’ estoppel, unclean hands, mitigation, and failure to show
27 irreparable harm defenses. “The general rule [] that summary judgment is improper if the
28 non-movant is not afforded a sufficient opportunity for discovery” should be applied in this

1 case for the reasons stated. *See Vance By & Through Hammons v. United States*, 90 F.3d
2 1145, 1148 (6th Cir. 1996).

3 Kalshi would prefer that Defendants have no chance to conduct discovery to support
4 their defenses and challenge Kalshi's claims. But that is not how civil litigation works; the
5 Court does not tie one party's hands and prevent it from putting on a defense. Particularly
6 where such important State sovereign interests are at stake, Defendants must have the
7 opportunity to test Kalshi's evidence and claims.

8 **CONCLUSION**

9 For the foregoing reasons, the Court should deny Kalshi's Emergency Motion to Stay
10 Discovery and permit discovery to continue during the pendency of Kalshi's Motion for
11 Summary Judgment.

12 DATED this 12th day of August, 2025.

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