UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

Underdog Exchange DCM, Inc. and UDM, LLC d/b/a Underdog Predict, *Plaintiffs*, v. JOSHUA L. KAUL, in his official capacity as Attorney General of WISCONSIN; and JOHN DILLETT, in his official capacity as Administrator of the Wisconsin Department of Administration Division of Gaming, *Defendants*.	Civil Action No. 3:26-cv-858

COMPLAINT FOR DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF

Underdog Exchange DCM, Inc. and UDM, LLC d/b/a Underdog Predict ("Underdog"), by and through their undersigned counsel, bring this civil action for declaratory and injunctive relief, and allege as follows:

INTRODUCTION

1. This action seeks to prevent the Attorney General of Wisconsin ("Attorney General") and the Administrator of the Wisconsin Department of Administration Division of Gaming ("Division of Gaming") (collectively, "Defendants") from unlawfully exercising jurisdiction over, regulating, or terminating Underdog's offering of lawful derivatives contracts on federally regulated markets.

2. Underdog operates a federally regulated designated contract market ("DCM") that lists event contracts for trading in interstate commerce. Underdog is also a federally registered futures commission merchant ("FCM") that solicits or accepts orders for the purchase or sale of event contracts traded on other DCMs. Through the Commodity Exchange Act ("CEA"), 7 U.S.C. §§ 1-27f, Congress vested the U.S. Commodity Futures Trading Commission ("CFTC") with sole regulatory authority over event contracts and other derivatives traded on designated contract markets, including deciding whether to prohibit certain event contracts—such as contracts related to gaming—as contrary (or not) to the public interest. *Id.* § 7a-2(c)(5)(C). According to the CEA and CFTC, "event contracts" are derivatives or swaps whose returns are "dependent on the occurrence, nonoccurrence, or the extent of the occurrence of an event or contingency."[1]

3. Pursuant to its DCM and FCM designations, Underdog offers event contracts in Wisconsin. Since the CFTC has "exclusive jurisdiction" to regulate trading on DCMs, including through FCMs, under the CEA, 7 U.S.C. §§ 1 *et seq.*, Underdog's compliance with CFTC approval procedures authorizes Underdog to offer and facilitate the trading of event contracts in Wisconsin. Nevertheless, Underdog now faces the imminent threat that Defendants will enforce Wisconsin's gambling and wagering statutes against its federally regulated market. Indeed, the Attorney General has already brought three nearly identical enforcement actions against five prediction market operators: KalshiEX LLC ("Kalshi"), a DCM; Coinbase Financial Markets, Inc. ("Coinbase"), an FCM; Robinhood Derivatives LLC ("Robinhood"), an FCM; QCX LLC ("Polymarket"), a DCM; and Foris Dax Markets, Inc. ("OG"), a DCM. *State of Wisconsin v. Kalshi, Inc.*, No. 2026cv001284 (Dane Cnty. Circuit Court Apr. 23, 2026); *State of Wisconsin v.*

[1] *See* Commodity Exchange Act, 7 U.S.C. § 1a(47); *Industry Oversight: Contracts & Products*, CFTC, https://www.cftc.gov/IndustryOversight/ContractsProducts/index.htm. Examples of "event contracts" listed on the CFTC website include predicted corporate earnings, level of snowfall, and dollar value of damage caused by a hurricane. *Id.*

QCX, LLC, No. 2026cv001285 (Dane Cnty. Circuit Court Apr. 23, 2026); *State of Wisconsin v. Foris Dax Markets, Inc.*, No. 2026cv001286 (Dane Cnty. Circuit Court Apr. 23, 2026).

4. Like Underdog, Kalshi, Coinbase, Robinhood, Polymarket, and OG are all regulated by the CFTC. Even so, Defendants assert that, notwithstanding that the CFTC has exclusive jurisdiction to regulate these entities, event contracts traded on DCMs and through FCMs are "bets" subject to Wisconsin gambling laws, and are prohibited by Wisconsin law. Complaint ¶¶ 3-8, *State of Wisconsin v. Kalshi, Inc.*, No. 2026cv001284 (Dane Cnty. Circuit Court Apr. 23, 2026) ("Kalshi et al. Complaint"); Complaint ¶¶ 3-8, *State of Wisconsin v. QCX, LLC*, No. 2026cv001285 (Dane Cnty. Circuit Court Apr. 23, 2026) ("Polymarket Complaint"); Complaint ¶¶ 3-8, *State of Wisconsin v. Foris Dax Markets, Inc.*, No. 2026cv001286 (Dane Cnty. Circuit Court Apr. 23, 2026) ("OG Complaint"). Underdog therefore faces a real and imminent risk of enforcement, exposing it to civil penalties, potential criminal liability, and severe collateral consequences to its nationwide operations.

5. Any enforcement action by Wisconsin would be meritless. Defendants' threat of enforcement is plainly inconsistent with Article VI, Clause 2, of the United States Constitution ("Supremacy Clause"), and any enforcement efforts are therefore preempted. The CFTC has also confirmed its position that states' enforcement of their laws against CFTC-designated contract markets violates the Supremacy Clause in each of the amicus briefs, motions to intervene, emergency orders, and eight litigations it has filed across the country seeking to enforce its exclusive jurisdiction over derivatives trading on DCMs. *See infra* ¶¶ 58-59, 71-72.

6. Congress was explicit with its intent in enacting the CEA and giving the CFTC exclusive jurisdiction: because derivatives transactions are "affected with a national public interest," it was essential to create "a system of effective self-regulation of trading facilities,

clearing systems, market participants and market professionals under the oversight of the [CFTC]." 7 U.S.C. § 5. Accordingly, federal courts have long recognized that the CFTC's regulation of the national derivatives market is exclusive and preempts state involvement.[2] As the Third Circuit recently recognized, "the text of the Act preempts otherwise applicable state laws that purport to regulate . . . event contracts on CFTC-licensed [contract markets]." *KalshiEX LLC v. Flaherty*, 172 F.4th 220, 228 (3d Cir. 2026).

7. Consistent with Congress's original purpose, each amendment to the CEA over the past century has only reinforced its intent to maintain a uniform system. For instance, Congress expanded the CFTC's exclusive authority to cover new products, including swaps and contracts on "excluded commodities," and authorized the CFTC to review and prohibit certain event contracts if it determines that their trading would be contrary to "the public interest." 7 U.S.C. § 7a-2(c)(5)(C). Consistent with its role, the CFTC has adopted regulations regarding when and how an event contract may be suspended as contrary to the public interest and has published copious guidance on its approach, most recently issuing a Notice of Proposed Rulemaking on the topic. *See* 17 C.F.R. § 40.11; Prediction Markets; Public Interest Determinations, 91 Fed. Reg.

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[2] *See, e.g.*, *Thrifty Oil Co. v. Bank of Am. Nat'l Tr. & Sav. Ass'n*, 322 F.3d 1039, 1055-57 (9th Cir. 2003) (finding the CEA preempted California's Bucket Shop Law as applied to swaps exempted from coverage by the CEA); *Bibbo v. Dean Witter Reynolds, Inc.*, 151 F.3d 559, 560, 563-64 (6th Cir. 1998) (noting that "[f]utures trading is conducted on exchanges designated as contract markets by the [CFTC], an independent agency created by Congress in 1974 to exercise *exclusive jurisdiction* over accounts, agreements, and transactions involving commodities futures contracts traded or executed on a contract market" and holding that a CEA regulation conflict preempted an Ohio statute that required payment to investors of any interest earned on collateral because it stood "as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress, as manifested in the language, structure and underlying goals of the CEA" (emphasis added)); *Am. Agric. Movement, Inc. v. Bd. of Trade of Chi.*, 977 F.2d 1147, 1156-57 (7th Cir. 1992) (holding the CEA preempted state law whose application "would directly affect trading on or the operation of a futures market"); *Leist v. Simplot*, 638 F.2d 283, 322 (2d Cir. 1980) (holding CEA "preempts the application of state law" to futures trading); *Rasmussen v. Thomson & McKinnon Auchincloss Kohlmeyer, Inc.*, 608 F.2d 175, 178 (5th Cir. 1979) (per curiam) (affirming dismissal of a claim that trading in futures contracts violated Georgia gambling statute "on the ground that the Commodity Exchange Act preempts all state laws inconsistent with its provisions"); *DGM Invs., Inc. v. N.Y. Futures Exch., Inc.*, No. 01 CIV. 11602(RWS), 2002 WL 31356362, at *5 (S.D.N.Y. Oct. 17, 2002) (dismissing state law claims as preempted by the CEA because they "would directly affect 'trading on or the operation of a futures market'" (citation omitted)).

35,806 (June 12, 2026) (to be codified at 17 C.F.R. pt. 40). This Notice of Proposed Rulemaking would amend 17 C.F.R. § 40.11 to define the enumerated categories of event contracts, including "gaming," and the factors the CFTC may consider to determine whether an event contract is "contrary to the public interest." *See* Prediction Markets; Public Interest Determinations, 91 Fed. Reg. at 35,859-61.

8. Underdog thus seeks declaratory and injunctive relief to protect its ability to operate federally regulated markets in Wisconsin. Any attempt by Wisconsin to regulate trading on DCMs (including through FCMs) is expressly preempted. Congress grants the CFTC "exclusive jurisdiction" to regulate trading on DCMs, including of options and "transactions involving swaps," such as event contracts. 7 U.S.C. § 2(a)(1)(A).

9. Wisconsin's regulation of trading on DCMs (including through FCMs) is also preempted because Congress has fully occupied the field of regulating federally registered DCMs, thereby preempting any overlapping state laws including state licensing or registration conditions that Wisconsin might purport to apply to Underdog.

10. Lastly, Wisconsin's state regulation of trading on DCMs (including through FCMs) that would require Underdog to cease offering federally authorized event contracts is additionally preempted because it directly conflicts with the CEA's framework. Underdog cannot comply with both its federal law obligations and any purported obligations under Wisconsin law. Moreover, ceasing operations in Wisconsin would, among other things, undermine the CEA's goals of creating a uniform system of derivatives trading and violate CFTC guidance intended to promote uniform and fair markets. Indeed, it would cause the exact harm the CEA sought to prevent: traders could open a position outside of Wisconsin, travel to Wisconsin, and, while there, lose the ability to close or expand their existing position due to Wisconsin's application of its gaming regulations.

11. The threat of Defendants' enforcement of Wisconsin law poses a direct and imminent threat to Underdog's business and its users, and leaves Underdog with a "Hobson's choice" wherein both its options will cause irreparable harm. *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 381 (1992). Either Underdog can continue to operate in Wisconsin, "expos[ing] [itself] to potentially huge liability," including civil and criminal penalties, reputational damage, and competitive disadvantage, or it can "suffer the injury of obeying [Wisconsin's] law" despite the fact that it is preempted. *Id.*

12. In light of the imminent threat it faces as a result of Defendants' intention to wrongfully enforce Wisconsin law, Underdog brings this action to protect its right to offer event contracts pursuant to federal law and regulation, maintain the integrity of the federal regulatory framework, and avert imminent harm to its business operations.

JURISDICTION AND VENUE

13. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 because the claims in this case arise under the Constitution and the laws of the United States—specifically, whether Wisconsin law is preempted by the CEA as applied to Underdog's event contracts. And the Court has the power to declare the rights and legal relations of the parties under the Declaratory Judgment Act, 28 U.S.C. § 2201.

14. Venue is proper in this District under 28 U.S.C. § 1391(b)(1), (b)(2). Defendants reside in the state and at least one defendant performs their duties and thus resides in this District. A substantial part of the events giving rise to the claims also occurred in this District.

15. The Eleventh Amendment does not bar this action. Underdog sues only state officials, in their official capacities, for prospective declaratory and injunctive relief to halt the

threatened enforcement of state law that violates federal law. *See Ex parte Young*, 209 U.S. 123, 155-56 (1908); *Verizon Md., Inc. v. Pub. Serv. Comm'n of Md.*, 535 U.S. 635, 645-46 (2002).

PARTIES

16. Plaintiff Underdog Exchange DCM, Inc. is a Delaware corporation headquartered in Brooklyn, New York. It operates a DCM regulated by the CFTC under the CEA, where users can trade financial products, including event contracts.

17. Plaintiff UDM, LLC, doing business as Underdog Predict, is a Delaware limited liability company headquartered in Brooklyn, New York. It is an FCM regulated by the National Futures Association ("NFA") and the CFTC under the CEA, offering event contracts traded on other CFTC-registered DCMs.

18. Defendant Joshua L. Kaul is the Attorney General of Wisconsin and is sued in his official capacity. The Attorney General is the state's chief legal officer.

19. Defendant John Dillett is the Administrator of the Division of Gaming and is sued in his official capacity.

20. Together, Defendants Joshua L. Kaul and John Dillett would be responsible for enforcing Wisconsin state laws that are preempted by federal law.

FACTUAL ALLEGATIONS

A. Underdog Operates Federally Registered Marketplaces For Trading Event Contracts.

21. Underdog operates a federally regulated DCM that provides a marketplace for trading in derivatives products, including event contracts. Underdog is also a federally regulated FCM that allows traders to use its platform to trade event contracts listed on other CFTC-registered DCMs.

22. Underdog registered its FCM with the NFA and CFTC on January 9, 2026, confirming that its platform complied with the CEA. As an FCM, Underdog began offering event contracts in Wisconsin on March 19, 2026.

23. The CFTC granted Aristotle Exchange DCM, Inc. its DCM designation on September 5, 2025, confirming that its market complied with the CEA. In March 2026, Underdog acquired Aristotle Exchange DCM, Inc. and its associated Derivatives Clearing Organization. Underdog announced the launch of its DCM on July 18, 2026.[3] On August 31, 2026, Aristotle Exchange DCM, Inc. filed a name change and is now named Underdog Exchange DCM, Inc.

24. From July 12, 2026 to September 2, 2026, pursuant to 7 U.S.C. § 7a-2(c)(1) and 17 C.F.R. §§ 40.2(a), (d), Underdog obtained CFTC certification for hundreds of event contracts.

25. On July 20, 2026, pursuant to its DCM designation, Underdog began offering its event contract listings in Wisconsin.

B. Congress Intentionally Vested the CFTC With Comprehensive and Exclusive Jurisdiction to Regulate Derivatives—Including Event Contracts—on Federally Registered Markets.

26. Derivatives are financial instruments used to allocate risk between counterparties. A derivative takes its value from something else—an asset, a rate, or a variable known as the underlier. The classic example is the grain futures contract, which permits buyers to mitigate the risk of volatility in agricultural markets by agreeing to buy or sell a specified amount of the crop at a fixed price on a future date. However, the underlier of a derivative can vary widely, allowing market participants to hedge against volatility across a wide array of tangible and intangible areas, including commodities like gold, financial benchmarks such as interest rates, and even weather or

[3] Press Release, Underdog, Underdog Launches Prediction Markets on its own Exchange, (July 18, 2026), https://www.underdogsports.com/news/underdog-launches-prediction-markets-on-its-own-exchange.

credit risk. Indeed, almost any type of risk can be hedged, as long as a CFTC-regulated market exists and a contract is available.

27. States have long viewed futures contracts with suspicion, equating trading on uncertain outcomes with gambling. Over a century ago, before the federal government began regulating derivatives markets, several states enacted outright bans on futures trading or subjected it to onerous restrictions under their gaming statutes. The resulting patchwork of often conflicting state regulation, poorly suited to facilitating a uniform national financial market, prompted Congress to take action.

28. First, Congress passed the 1922 Grain Futures Act, which required futures transactions for grain to be conducted on contract markets designated by the Secretary of Agriculture, centralizing trading on grain. Grain Futures Act, Pub. L. No. 67-331, 42 Stat. 998, 1000 (1922).

29. Then, in 1936, Congress strengthened this federal scheme by enacting the CEA. The CEA established a uniform federal framework for regulating futures markets, extended federal authority to a broader class of commodities and created the Commodity Exchange Authority, a division within the Department of Agriculture charged with monitoring trading practices and prosecuting price manipulation. However, Congress did not yet establish an independent federal agency to comprehensively regulate the nation's derivatives markets. It also did not completely foreclose the application of state law, clarifying in the statute itself that the federal law would not impair the enforcement of applicable state laws. Commodity Exchange Act, Pub. L. No. 74-675, § 5, 49 Stat. 1491, 1494 (1936).

30. As derivatives markets became more sophisticated and integral to the national economy, Congress worried that, absent a single national regulator, "states . . . might step in to

regulate the futures markets themselves," subjecting national exchanges to "conflicting regulatory demands." *Am. Agric. Movement*, 977 F.2d at 1156; *see also Leist*, 638 F.2d at 322 ("The federal government has been vitally concerned with trading in futures since 1922; indeed, the courts have held that § 2(a)(1) of the CEA preempts the application of state law."); *DGM Invs.*, 2002 WL 31356362, at *4 ("'Congress' intent to bring the markets under a uniform set of regulations' followed from a fear that states might attempt to regulate futures markets themselves and thus 'subject the national futures trading apparatus to conflicting regulatory demands.'" (citation omitted)); *Commodity Futures Trading Commission Act: Hearings Before the Senate Committee on Agriculture & Forestry*, 93d Cong., 2d Sess. 685 (1974) (hereinafter "Senate Hearings") ("different State laws would just lead to total chaos" (statement of Sen. Clark)). Similarly, the House Agriculture Committee stressed the need to bring "all exchanges and all persons in the industry under the same set of rules and regulations for the protection of all concerned." H.R. Rep. No. 93-975, at 85 (1974).

31. Accordingly, in 1974, Congress enacted sweeping amendments to the CEA (the "1974 Act") and established the CFTC as an independent federal agency charged with regulating the national derivatives markets. And, to address the threat posed by conflicting state regulation, Congress added a provision expressly granting the CFTC "exclusive jurisdiction" over derivatives trading on federally regulated exchanges. 7 U.S.C. § 2(a)(1)(A). Congress also *eliminated* the 1936 provision providing that the CEA did not supersede or limit state jurisdiction "in order to assure that [f]ederal preemption [was] complete." 120 Cong. Rec. 30,464 (1974) (statements of Sen. Curtis, supported by Sen. Talmadge).

32. In subsequent amendments to the CEA, Congress continued to reinforce the importance of exclusive federal control over derivatives markets through a single agency—the

CFTC. For instance, the 1992 Futures Trading Practices Act ("FTPA") expanded the CFTC's regulatory authority by permitting the CFTC to exempt certain financial instruments from the requirement that they be traded on a registered exchange. *See* 7 U.S.C. § 6(c). Congress also brought any such exempt financial instruments within the scope of the CFTC's exclusive authority by supplementing the existing express preemption provision, *id*. § 2, with a provision explicitly preempting "any State or local law that prohibits or regulates gaming" with respect to any agreement, contract, or transaction exempted from the exchange-trading requirement. *Id*. § 16(e)(2).

33. Similarly, in 2010, Congress amended the CEA through the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 ("Dodd-Frank Act"). Once again, Congress expanded the CFTC's exclusive jurisdiction over derivatives markets. Congress added exchange-traded swaps to the types of derivatives within the CFTC's exclusive jurisdiction, *see id.* § 2(a)(1)(A), and expressly delegated authority to the CFTC and SEC to "further define" swaps as needed. 15 U.S.C. § 8302(d)(1). Congress also established a "Special Rule" expressly granting the CFTC discretionary authority to determine whether specific event contracts, including those that reference terrorism, assassination, war, gaming, activity that is unlawful under federal or state law, or another similar activity, are "contrary to the public interest" and, if so, to prohibit them from trading on DCMs. *See* 7 U.S.C. § 7a-2(c)(5)(C)(i); 17 C.F.R. § 40.11(a). The Special Rule explicitly contemplated CFTC regulation of sports-related event contracts by giving the CFTC authority to prohibit event contracts related to "gaming" if those contracts are contrary to the public interest. The Special Rule does not require the CFTC to disallow event contracts referencing these underlying activities, but rather grants the agency the discretion to conduct a public interest review based on its own criteria.

34. Each iteration of the CEA has only reinforced Congress' intention to create a national market for derivatives products *despite* the concerns of individual states that derivatives markets should have remained under state control. Congress created a federal agency, vested it with exclusive jurisdiction, and centralized regulation over derivatives markets, granting the CFTC authority both to certify and prohibit derivatives products.

C. The CEA and CFTC Regulations Establish a Comprehensive Federal Regulatory and Enforcement Framework for Trading Event Contracts.

35. As a result of the CEA, the federal regulatory scheme governing the trading of derivatives, including event contracts, on DCMs and through FCMs is comprehensive and well-established.

36. To offer its derivatives for public trading, an entity must first be designated a contract market, or a DCM, by the CFTC. *See* 7 U.S.C. §§ 2(e), 7(a); 17 C.F.R. § 38.3(a). The designation process is rigorous and requires the applicant to demonstrate compliance with the CEA's Core Principles as set out by the CFTC. *See* 17 C.F.R. § 38.3(a)(2); 7 U.S.C. § 7(d); *infra* § J.

37. Among other things, this requires the applicant to show it can and will: (1) comply with all CFTC requirements imposed by rule or regulation; (2) establish, monitor and enforce compliance with the rules; (3) list only contracts that are not readily susceptible to manipulation; (4) have the capacity and responsibility to prevent manipulation, price distortion, and disruptions of the delivery or cash-settlement process through market surveillance, compliance, and enforcement; and (5) adopt position limitations for each contract to reduce the threat of market manipulation. *See* 17 C.F.R. §§ 38.100, 38.150, 38.200, 38.250, 38.300.

38. Once approved and granted designation, a DCM becomes subject to an expansive regulatory framework administered by the CFTC. DCMs have extensive continuing federal

obligations, including prescriptive capital and liquidity requirements, participant eligibility standards, reporting obligations, recordkeeping mandates, and operational and governance standards—all directed toward compliance with the CEA's Core Principles. *See* 17 C.F.R. §§ 38.1101, 38.604, 38.1051(i), 38.950, 1.31, 38.450, 38.451; 7 U.S.C. § 7(d); *see generally* 17 C.F.R. pt. 38.

39. Because of the breadth and rigor of this regulatory framework, a DCM earning the CFTC's designation is accorded the status of a self-regulatory organization under federal law. DCMs are entrusted with front-line enforcement responsibilities, including establishing and enforcing market rules, detecting and preventing market abuses, and ensuring the integrity of all listed products and intermediaries. *See* 17 C.F.R. § 1.3; *id.* pt. 38.

40. In addition to its regulatory oversight authority, the CFTC possesses exclusive and comprehensive enforcement powers with respect to DCMs, their intermediaries, and market participants.

41. The CFTC's Division of Enforcement may initiate investigations and, with the approval of a majority of the Commission, bring enforcement actions in federal court or through administrative proceedings. *See* CFTC Division of Enforcement, Enforcement Manual (2020) at § 3.3. If the Division determines that a violation of the CEA has occurred, the CFTC may pursue civil monetary penalties, restitution, disgorgement, injunctive relief, cease-and-desist orders, and the suspension or revocation of registration and trading privileges. Criminal violations may be referred to the Department of Justice. *See* CFTC Division of Enforcement, Enforcement Manual (2020) at § 3.3.

42. Just like DCMs, FCMs are subject to comprehensive CFTC regulation. The CEA defines an FCM as "an individual, association, partnership, corporation, or trust that is engaged in

soliciting or in accepting orders for the purchase or sale of a commodity for future delivery; a security futures product; a swap" or certain other transactions and "in or in connection with [those activities], accepts any money, securities, or property (or extends credit in lieu thereof) to margin, guarantee, or secure any trades or contracts that result or may result therefrom." 7 U.S.C. § 1a(28). FCMs are required to register with the CFTC, *id.* § 6f; 17 C.F.R. § 3.10(c), and to comply with reporting requirements to the CFTC, *id.* §§ 1.10(b), 1.10(d), 17.00, disclosure requirements to the public, *id.* § 1.55, minimum financial requirements, *id.* §§ 1.12, 1.17, and recordkeeping requirements, *id.* §§ 1.14, 1.18. They must also "establish, maintain, and enforce" a risk management program and adhere to related reporting requirements. *Id.* §§ 1.11(c)(1), 1.15. Finally, FCMs must establish internal procedures to ensure compliance with trading standards, *id.* § 155.3, and adopt written policies and procedures to ensure compliance with conflict of interest regulations, *id.* § 1.71.

D. Event Contracts Are Swaps Under the CEA.

43. DCMs list event contracts for trading in interstate commerce. Event contracts are exchange-traded financial instruments, known as derivatives or swaps, and are defined broadly under the CEA as relating to any "occurrence, extent of an occurrence, or contingency," 7 U.S.C. § 7a-2(c)(5)(C)(i), that is "beyond the control of the parties to the relevant contract" and "associated with" economic consequences. *See id.* § 1a(47) (defining "swap"); *id.* § 1a(19)(iv); *see also Flaherty*, 172 F.4th at 226 ("'[S]wap' includes event contracts.").[4] FCMs can serve as an intermediary for trading swaps on DCMs.

44. The CEA defines "swap" broadly to include "any agreement, contract, or transaction . . . that provides for any purchase, sale, payment, or delivery . . . dependent on the

[4] Events themselves are an excluded commodity under the CEA. *See* 7 U.S.C. § 7a-2(c)(5)(C)(i).

occurrence, nonoccurrence, or the extent of the occurrence of an event or contingency associated with a potential financial, economic, or commercial consequence." 7 U.S.C. § 1a(47)(A)(ii). It additionally includes as swaps any instrument "that is, or in the future becomes, commonly known to the trade as a swap." *Id.* § 1a(47)(A)(iv).

45. "[Event] contracts are not novel innovations." Brief for CFTC as Amicus Curiae Supporting Plaintiff at 7, *KalshiEX LLC v. Schuler*, No. 26-3196 (6th Cir. May 12, 2026), ECF No. 31. Since 1992, CFTC-registered exchanges have been listing derivatives with payouts based on events "as diverse as regional insured property losses, the count of bankruptcies, temperature volatilities, corporate mergers, and corporate credit events." *Id.* (quoting 73 Fed. Reg. 25669, 25671 (May 7, 2008)).

E. Event Contracts Have Price Discovery Benefits, Predictive Value and Allow Businesses to Hedge Risk.

46. FCMs and DCM operators offering event contracts provide a neutral marketplace by matching counterparties to each other. They are not bookmakers. Unlike a casino, they do not set odds, assume directional risk, or take positions against their customers. Instead, they maintain a transparent marketplace with prices that reflect the supply and demand of a given position in real time.

47. Event contracts typically have a binary payoff structure dependent on the occurrence or non-occurrence of an event or contingency, represented by "yes" or "no" positions. A trader who takes an event contract with the "yes" position profits if the specified event or contingency occurs, while the "no" position purchaser profits if it does not. An active position may also be closed at a profit or loss prior to the occurrence or non-occurrence of the specified event or contingency.

48. The price of an event contract is determined by market forces, namely the supply and demand for entering into the "yes" and "no" positions of the contract. An event contract has a set expiration date, and the price of an event contract will fluctuate along with the market's perception of the likelihood of an event's occurrence until settling at a final price on the expiration date. Accordingly, event contracts have enormous predictive value because their price is set based on the market's aggregated expectations about whether the underlying event will occur.

49. Event contracts also allow businesses to hedge the risks associated with the occurrence or non-occurrence of a particular event, and thus act as a valuable risk management tool. For instance, sports-related event contracts can be used to hedge risk in many scenarios, including:

a. Media, broadcasting, and event ticketing companies facing financial exposure tied to viewership, which can fluctuate significantly depending whether there is a work stoppage or labor strike in a given sport, how competitive or interesting a game is, or how well a given team or franchise is playing;

b. Retailers selling team merchandise or apparel who see major swings in sales depending on whether a popular team advances or a particular player wins;

c. Travel and hospitality businesses exposed to spikes and falls in bookings dependent on whether a local team advances or hosts an event;

d. Restaurants and bars located around major arenas serving drastically different numbers of customers depending on whether a major event occurs,[5] or whether additional games in the NBA finals are played in a particular arena;

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[5] *See, e.g.*, Devin Gannon, *NYPD Closes Area Around MSG for Knicks Game*, 6sqft N.Y.C. (June 10, 2026), https://www.6sqft.com/nypd-closes-area-around-msg-for-knicks-game; Charlie McKenna, *Boston PD to Shut Down Area Around TD Garden During Celtics NBA Finals Game*, Mass Live (June 17, 2024),

e. Advertising and marketing agencies with client campaigns tied to event outcomes, including guaranteed audience metrics, sponsor-activation thresholds, or promotional triggers linked to competition results;

f. Businesses running promotions tied to game results; and

g. Fantasy sports platforms and sports data providers relying on fan engagement and player performance.

50. This is not speculative. Companies such as Game Point Capital have already "arranged millions of dollars' worth of hedges through Kalshi."[6] Similarly, industry commentary has highlighted that event contracts will allow "small businesses that outright *depend on* a full 162-game MLB regular season schedule each year" to hedge their risks during a potential Major League Baseball ("MLB") lockout in 2027.[7] Indeed, these businesses can use Underdog to trade "yes" or "no" on an event contract regarding whether the MLB will have a "New [Collective Bargaining Agreement] Before Dec 2nd, 2026," i.e., whether a lockout will occur, and an event contract regarding whether "the first game of the 2027 MLB regular season [will] commence before March 25, 2027." Without the ability to hedge such risks using event contracts, "[l]ocal bars, food vendors, parking lots, souvenir shops, and even ticket scalpers could see their revenues

https://www.masslive.com/news/2024/06/boston-pd-to-shut-down-area-around-td-garden-during-celtics-nba-finals-game.html.

6 Andrew Ross Sorkin et al., *Hedging, not betting, on sports via prediction markets*, N.Y. Times DealBook (Feb. 10, 2026), https://www.nytimes.com/2026/02/10/business/dealbook/epstein-lutnick-wasserman-starmer.html; Tarek Mansour (@mansourtarek_), X (Feb. 12, 2026, 3:38 P.M.), https://x.com/mansourtarek_/status/2022047766445535538?lang=en.

7 *See* David Huber, Prediction Market Hedging Could Become Mainstream During 2027 MLB Negotiations, Deadspin (Aug. 7, 2026), https://deadspin.com/prediction-markets/legal-news/prediction-market-hedging-could-become-mainstream-during-2027-mlb-negotiations/ (emphasis in original); *see also* Joe Peta (@MagicRatSF), X (Aug. 4, 2026, 12:59 A.M.), https://x.com/MagicRatSF/status/2084866766732423467?s=46 (noting the extremity of the "binary economic impact for dozens of cities, hundreds of business and thousands of people" the outcome of Kalshi's market for how many MLB games will be played next season has, such that "[w]e should be cheering @Kalshi for its existence").

catastrophically slide if the MLB regular season is canceled or shortened due to stalled negotiations."[8]

51. The viability of event contracts' hedging function depends on the efficiency of the markets and thus relies on speculation. *See Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Curran*, 456 U.S. 353, 358 (1982) ("The liquidity of a futures contract, upon which hedging depends, is directly related to the amount of speculation that takes place.").

52. As the CFTC has explained, "[i]n addition to their information aggregation, price discovery, and price dissemination functions, prediction markets allow market participants to hedge exposure to a wide array of events for which no traditional financial instrument otherwise exists" such as "'sporting events . . . that generate billions of dollars in economic activity and materially affect both regional and national markets.'" Prediction Markets; Public Interest Determinations, 91 Fed. Reg. 35,806 at 35,807-08 (June 12, 2026) (to be codified at 17 C.F.R. pt. 40).

F. The CFTC Has Exclusive and Discretionary Authority to Permit or Prohibit Event Contracts.

53. A registered DCM is permitted to list new derivatives contracts—including event contracts—for trading without obtaining the CFTC's prior approval of each individual contract. Instead, the DCM must certify to the CFTC that each new contract complies with applicable regulatory standards by filing a written certification prior to listing. *See* 7 U.S.C. § 7a-2(c)(1); 17 C.F.R. § 40.2(a). The CFTC then has a period of time to review and object to the submission before listing. If it fails to act during that period, the contract is deemed "effective" and may be

[8] Huber, *see supra* n.7.

listed for trading. *See* 7 U.S.C. § 7a-2(c). The CFTC may also conduct a discretionary review after the contract has been listed.

54. Under the CEA's "Special Rule," Congress expressly granted the CFTC discretionary authority to prohibit trading on specific event contracts, including those that reference gaming, if they are "contrary to the public interest." *See* 7 U.S.C. § 7a-2(c)(5)(C)(i). Congress did not authorize states to override or nullify federal authorization of event contracts by deeming them unlawful under state gambling law. *See* 17 C.F.R. § 40.11; 7 U.S.C. § 7a-2(c)(5)(C).

55. The CFTC has established procedures by which it may determine whether trading in a specific contract should be suspended and retains authority to initiate a formal review of any submitted contract under its own rules. *See* 7 U.S.C. § 7a-2(c)(2); 17 C.F.R. §§ 40.2, 40.11. This includes a 90-day discretionary review period, during which the CFTC may determine a contract is contrary to the public interest and order the DCM to suspend its trading. *See* 17 C.F.R. § 40.11(c). This mechanism ensures continued federal oversight while permitting market innovation to proceed without pre-approval delays for each new product.

56. On June 10, 2026, the CFTC issued a Notice of Proposed Rulemaking, proposing amendments to this discretionary review process. The proposed rule defines "gaming" and imposes three conditions that must occur before a contract may be deemed contrary to the public interest. *See* CFTC Release No. 9249-26. First, the agreements, contracts, transactions, or swaps must be based upon the occurrence, extent of an occurrence, or contingency. *Id.* Second, the agreements, contracts, transactions, or swaps must "involve" any of the enumerated activities (gaming, war, terrorism, assassination, and activities illegal under state and federal law). *Id.* Third, the CFTC must affirmatively determine that the agreements, contracts, transactions, or swaps are contrary to the public interest. *Id.*

G. The CEA and the CFTC Have Confirmed the CFTC's Exclusive Authority Over Event Contracts Traded On DCMs and Through FCMs.

57. To ensure uniformity in event contract markets and preserve the accuracy of event contract pricing, Congress granted the CFTC exclusive authority to regulate event contracts listed on DCMs and FCMs, including the event contracts Underdog offers directly and as an intermediary, as a subcategory of derivatives. *See* 7 U.S.C. § 1a(47)(A)(ii), (iv), (vi); *supra* § B. Indeed, "event contracts" are specifically addressed in the CEA and in the Special Rule of the 2010 Dodd-Frank Act. *See* 7 U.S.C. § 7a-2(c)(5)(C)(i); 7 U.S.C. § 1a(19)(iv).

58. The CFTC has further confirmed its exclusive authority to regulate event contracts listed on DCMs and FCMs through litigation. The CFTC has brought actions against the states and state regulators in eight states, including Wisconsin, alleging that federal law preempts state law regulating event contracts traded on federally regulated markets. *See United States & CFTC v. Wisconsin*, No. 2:26-cv-749 (E.D. Wis. Apr. 28, 2026); *United States & CFTC v. Arizona*, No. 2:26-cv-2246 (D. Ariz. Apr. 2, 2026); *United States & CFTC v. Connecticut*, No. 3:26-cv-498 (D. Conn. Apr. 2, 2026); *United States & CFTC v. Illinois*, No. 1:26-cv-3659 (N.D. Ill. Apr. 2, 2026); *United States & CFTC v. New York*, No. 1:26-cv-03404 (S.D.N.Y. Apr. 24, 2026); *United States & CFTC v. Minnesota*, No. 0:26-cv-02661 (D. Minn. May 19, 2026); *United States & CFTC v. New Mexico*, No. 1:26-cv-01912 (D.N.M. June 12, 2026); *United States & CFTC v. Kentucky*, No. 3:26-cv-00049 (E.D. Ky. June 23, 2026). Briefing is ongoing in the CFTC's Seventh Circuit appeal of a Wisconsin district court's denial of the CFTC's motion for preliminary injunction. *United States v. Wisconsin*, No. 26-2636 (7th Cir. Aug. 7, 2026). Additionally, the CFTC successfully moved to intervene in a lawsuit brought by Kalshi against state regulators in Rhode Island. *KalshiEX LLC v. Furcolo*, No. 1:26-cv-00327 (D.R.I. May 28, 2026), ECF No. 19. The CFTC has also submitted briefs as an amicus curiae in Michigan, Nevada, Ohio and Tennessee

reiterating its position. Brief for CFTC as Amicus Curiae Supporting Plaintiff, *N. Am. Derivatives Exch. Inc. v. Nevada*, No. 25-7187 (9th Cir. Feb. 17, 2026), ECF No. 38; Brief for CFTC as Amicus Curiae Supporting Plaintiff, *KalshiEX, LLC v. Schuler*, No. 26-3196 (6th Cir. May 12, 2026), ECF No. 31; Brief for CFTC as Amicus Curiae Supporting Plaintiff, *KalshiEX, LLC v. Orgel*, No. 26-5235 (6th Cir. June 24, 2026), ECF No. 63; Brief for CFTC as Amicus Curiae Supporting Plaintiff, *QCX, LLC v. Nessel*, No. 26-1552 (6th Cir. Aug. 24, 2026), ECF No. 20.

59. The CFTC has also issued several notices, including Release No. 9194-26 (Mar. 12, 2026) and Prediction Markets Advisory (CFTC Letter No. 26-08), explaining that event contracts are "swaps" under the CEA. The CFTC's most recent Notice of Proposed Rulemaking, Release No. 9249-26 (June 10, 2026), once again confirmed that "Congress vested the Commission with 'exclusive jurisdiction' over 'transactions involving swaps'" and that event contracts are swaps. Prediction Markets; Public Interest Determinations, 91 Fed. Reg. 35,806 at 35,808-11 (June 12, 2026) (to be codified at 17 C.F.R. pt. 40).

H. Wisconsin Extensively Regulates Gambling and Betting.

60. "Sports betting has long been illegal in Wisconsin, with exceptions only for certain Native American tribal gaming operations." Kalshi et al. Complaint ¶ 1; Polymarket Complaint ¶ 1; OG Complaint ¶ 1. "Wisconsin courts have also long recognized that illegal gambling operations represent public nuisances." Kalshi et al. Complaint ¶ 40; Polymarket Complaint ¶ 32; OG Complaint ¶ 31.

61. Under Wisconsin law, "[a]n action to enjoin a public nuisance may be commenced and prosecuted in the name of the state . . . by the attorney general." Wis. Stat. § 823.02. "[R]epeated violation[s] of . . . criminal statute[s] constitute[ ] per se a public nuisance." *State v. H. Samuels Co.*, 60 Wis. 2d 631, 636 (1973); *see also* Kalshi et al. Complaint ¶ 81.

62. "Commercial gambling," a Class I felony in Wisconsin, occurs when anyone "[f]or gain, receives, records, or forwards a bet or offer to bet," "[f]or gain, becomes a custodian of anything of value bet or offered to be bet," or "[f]or gain, uses a wire communication facility for the transmission or receipt of information assisting in the placing of a bet or offer to bet on any sporting event or contest, or for the transmission of a wire communication which entitles the recipient to receive money or credit as a result of a bet or offer to bet." Wis. Stat. § 945.03(1m). A Class I felony carries the possibility of a fine up to $10,000.00. Wis. Stat. § 939.50(3i).

63. A "bet" is defined as "a bargain in which the parties agree that, dependent upon chance even though accompanied by some skill, one stands to win or lose something of value specified in the agreement." Wis. Stat. § 945.01(1).

64. A "wire communication facility" is defined as "any and all instrumentalities, personnel and services, and among other things the receipt, forwarding or delivery of communications used or useful in the transmission of writings, signs, pictures and sounds of all kinds by means of wire, cable, microwave or other like connection between the points of origin and reception of such transmission." Wis. Stat. § 945.01(6).

I. Defendants Have Enforced Wisconsin Law Against CFTC-Regulated Prediction Markets for Offering Event Contracts in Wisconsin.

65. On April 23, 2026, the Attorney General filed three lawsuits against five prediction market operators, including both DCMs and FCMs: Kalshi, Coinbase, Robinhood, Polymarket, and OG. *See* Kalshi et al. Complaint; Polymarket Complaint; OG Complaint. Each complaint alleges that the DCM or FCM offers event contracts constituting "bets" under Wis. Stat. § 945.01(1), and violates Wis. Stat. § 945.03(1m) by: (i) "[f]or gain, receiv[ing], record[ing] or forward[ing] a bet"; (ii) "[f]or gain, becom[ing] a custodian of anything of value bet or offered to be bet"; and (iii) "[f]or gain, us[ing] a wire communication facility for the transmission or receipt

of information assisting in the placing of a bet or offer to bet on any sporting event or contest, or for the transmission of a wire communication which entitles the recipient to receive money or credit as a result of a bet or offer to bet." Kalshi et al. Complaint ¶¶ 84-91; Polymarket Complaint ¶¶ 63-69; OG Complaint ¶¶ 59-66. Each complaint further alleges that such violations are repeated, and thus constitute an abatable public nuisance. Kalshi et al. Complaint ¶ 92; Polymarket Complaint ¶ 70; OG Complaint ¶ 67.

66. Under Wisconsin law, violations of Wis. Stat. § 945.03(1m) are Class I felonies that carry up to a $10,000.00 fine. In each complaint, Wisconsin seeks (i) a declaratory judgment holding that the offering of sports-related event contracts to customers located in Wisconsin violates Wisconsin state law; (ii) preliminary and permanent injunctive relief prohibiting each DCM or FCM from "making sports-related event contracts available for trading by customers located in Wisconsin"; and (iii) other remedies. Kalshi et al. Complaint at 33-34; Polymarket Complaint at 22-23; OG Complaint at 22-23.

67. Also on April 23, 2026, the Attorney General filed a motion for a temporary injunction seeking to enjoin and restrain each DCM or FCM "from making sports-related event contracts available for trading by customers located in Wisconsin." Motion for Temporary Injunction at 40, *State of Wisconsin v. Kalshi, Inc.*, No. 2026cv001284 (Dane Cnty. Circuit Court Apr. 23, 2026), Dkt. No. 14; Motion for Temporary Injunction at 41, *State of Wisconsin v. QCX, LLC*, No. 2026cv001285 (Dane Cnty. Circuit Court Apr. 23, 2026), Dkt No. 6; Motion for Temporary Injunction at 41, *State of Wisconsin v. Foris Dax Markets, Inc.*, No. 2026cv001286 (Dane Cnty. Circuit Court Apr. 23, 2026), Dkt. No. 7.

68. On April 23, 2026, the Attorney General issued a press release regarding Wisconsin's lawsuits against Kalshi, Robinhood, Coinbase, Polymarket, and OG, stating that

"'[t]hinly disguising unlawful conduct doesn't make it lawful . . . . These companies' alleged facilitation of sports betting in Wisconsin should be shut down.'"[9]

69. On June 9, 2026, the Attorney General filed a motion for preliminary injunction in its removed enforcement proceeding against Kalshi, Robinhood, and Coinbase seeking to enjoin and restrain them "from making sports-related event contracts available for trading by customers located in Wisconsin." Motion for a Preliminary Injunction, *State of Wisconsin v. Kalshi, Inc.*, No. 3:26-cv-00378 (W.D. Wis. June 9, 2026).

70. The Attorney General's theory is that all event contracts, regardless of subject matter, are "bets" under Wis. Stat. § 945.01(1), and thus that DCM operators and FCMs violate Wisconsin law, notwithstanding federal law authorizing such contracts and affording the CFTC exclusive jurisdiction over them. Kalshi et al. Complaint ¶ 85; Polymarket Complaint ¶ 64; OG Complaint ¶ 60. This theory applies in equal force to Underdog as it does to each of the five DCMs and FCMs being sued.

J. The CFTC Has Made Clear that Compliance With States' Enforcement Demands Will Violate the CEA's Core Principles.

71. As required by the CEA, the CFTC has adopted regulations setting out these "Core Principles," which DCMs must follow. One such regulation, Core Principle 2, requires DCMs to offer "impartial access" to their markets and services to users across the country. *See* 17 C.F.R. § 38.151(b). The CFTC has explained that a patchwork of differing state regulations would undermine this obligation—not to mention the purpose of the CEA—"because a DCM is required by federal law to provide 'impartial access' to all eligible participants nationwide." Complaint ¶ 78, *United States & CFTC v. New York*, No. 1:26-cv-3404 (S.D.N.Y. Apr. 24, 2026). It also

[9] Josh Kaul, Press Release, *Wisconsin DOJ Sues To Stop Alleged Illegal Sports Betting Operations in Wisconsin* (Apr. 23, 2026), https://www.wisdoj.gov/PressReleases/press-release-sports-betting.pdf.

stated that states' "attempt to regulate and seek civil injunctions and penalties against DCMs and FCMs," like Underdog, "directly violate[s] and undermine[s] the CFTC's regulation requiring 'impartial access' to all eligible participants nationwide." *Id.* ¶ 66-67 (citing 17 C.F.R. § 38.151(b)).

72. The CFTC has additionally made clear that compliance with state enforcement actions would violate the Core Principles, bringing DCMs out of compliance with their obligations under the CEA. For instance, on August 11, 2026, the CFTC issued an emergency order directing Kalshi and its affiliates to continue to perform its functions as an exchange in response to New York's ongoing enforcement action against Kalshi.[10] The CFTC stated that compliance with New York's proposed TRO, if granted, would "contravene[] CEA Core Principles 4 and 9, which require a DCM to 'prevent manipulation, price distortion, and disruptions of the delivery or cash-settlement process' and 'provide a competitive, open, and efficient market and mechanism for executing transactions that protects the price discovery process of trading in the centralized market.'" *Id*. at 8-9 (citing 7 U.S.C. §§ 7(d)(4), 7(d)(9)). Similarly, on July 14, 2026, in response to a state court decision ordering Kalshi to "void[], cancel[], and refund[]" trades entered into by Kalshi traders located in Michigan, the CFTC issued an Order directing Kalshi to "fulfill the open trades in question as it would in the ordinary course of business."[11] The CFTC found that the Michigan court's "unprecedented order" constitutes a "'major market disturbance which prevents the market from accurately reflecting the forces of supply and demand' with respect to event

[10] Order Directing Kalshi to Continue Exercising DCM Functions at 9, In the Matter of KalshiEX LLC's Notice Regarding Market Emergency Declaration, CFTC (August 11, 2026), https://www.cftc.gov/PressRoom/PressReleases/9281-26 (hereinafter "New York CFTC Order").

[11] CFTC Order Staying Emergency Rule Filed by KalshiEX LLC and Directing Kalshi to Fulfill Open Trades Involving Michigan Residents, In re Matter of KalshiEX LLC's Notice Regarding Market Emergency Declaration and Emergency Rule Filing Pursuant to Commission Regulation 40.6(a), CFTC (July 14, 2026) at 3, 9, https://www.cftc.gov/filings/documents/2026/orgcftcorderstayingkalem61407.pdf (hereinafter "Michigan CFTC Order").

contracts" and that "forced liquidation of trades will cause distortions" which "would, among other things, violate CEA Core Principle 4, which requires DCMs to prevent manipulation, price distortion, and disruption of the cash-settlement process." *Id*. at 6-8. The CFTC's directives in its orders, both in New York and Michigan, would apply to Underdog with equal force here and nationwide.

K. Defendants' Anticipated Enforcement Against Underdog Will Irreparably Harm Underdog and Preclude Its Ability to Comply With Federal Regulations.

73. The threat of enforcement against Underdog is real, imminent, and concrete. Given Wisconsin's definitive position on prediction markets, which has already prompted litigation against multiple prediction market companies, there is an imminent likelihood that Defendants' forthcoming actions will violate the Supremacy Clause of the U.S. Constitution and subject Underdog and its customers to irreparable harm. *See Morales*, 504 U.S. at 381 (no adequate remedy at law where attorneys general had "made clear" they would seek to enforce state law and thus "enforcement actions [were] imminent"). The prospect of an imminent enforcement action leaves Underdog with a "Hobson's choice" wherein both its options are certain to cause irreparable harm: either Underdog can "suffer the injury of obeying [Wisconsin's] law" despite the fact that it is preempted, or it can continue to operate in Wisconsin, "expos[ing] [itself] to potentially huge liability." *Morales*, 504 U.S. at 381.

74. If Underdog complies with Wisconsin's wrongful assertion of its authority over DCMs by ceasing to offer event contracts in Wisconsin, it will violate the CFTC's Core Principles, bringing Underdog out of compliance with its obligations under the CEA. *See supra* § J. Indeed, in response to state enforcement actions against Kalshi, the CFTC stated that compliance with state demands to cease operations would "contravene[] CEA Core Principles 4 and 9, which require a DCM to 'prevent manipulation, price distortion, and disruptions of the delivery or cash-settlement

process' and 'provide a competitive, open, and efficient market and mechanism for executing transactions that protects the price discovery process of trading in the centralized market.'" New York CFTC Order at 8-9 (citing 7 U.S.C. §§ 7(d)(4), 7(d)(9)). Similarly, in response to Kalshi's notification that it planned to liquidate open derivative positions to comply with a state court order in Michigan, the CFTC stated that such a plan would "violate CEA Core Principle 4." Michigan CFTC Order at 8.

75. Compliance with Wisconsin's demands would also be extremely costly and would cause reputational and competitive injury, particularly damaging to such a new DCM fighting for market share. Any economic losses Underdog incurs from ceasing operations would be unrecoverable because sovereign immunity bars recovery for monetary damages, causing Underdog irreparable harm. *See Alden v. Maine*, 527 U.S. 706, 712-13 (1999); *Nat'l Insts. of Health v. Am. Pub. Health Ass'n*, 145 S. Ct. 2658, 2659-60 (2025) (per curiam) (although "the loss of money is not typically considered irreparable harm, that changes if the funds 'cannot be recouped'"); *see also Staffing Servs. Ass'n of Ill. v. Flanagan*, 720 F. Supp. 3d 627, 641 (N.D. Ill. 2024) (finding irreparable harm where "[s]overeign immunity prevents Plaintiffs from seeking compensatory damages" from a government agency); *Cmty. Pharmacies of Ind., Inc. v. Ind. Fam. & Soc. Servs. Admin.*, 801 F. Supp. 2d 802, 806 (S.D. Ind. 2011) (similar).

76. Further, Underdog cannot realistically comply with Wisconsin's requirements without entirely abandoning the federal rights it has obtained through its successful application to the CFTC for designation as a DCM and FCM. "Sports betting has long been illegal in Wisconsin, with exceptions only for certain Native American tribal gaming operations," so no license is available for offering event contracts in Wisconsin. Kalshi et al. Complaint ¶ 1; *see also id*. at ¶¶ 45-46.

77. On the other hand, if Underdog refuses to acquiesce to Wisconsin's wrongful position, it will almost certainly become subject to enforcement efforts, as shown by Wisconsin's enforcement against five DCMs and FCMs, Defendants' roles in enforcing Wisconsin gambling law, and Defendants' public statements committing to continue enforcing state law against prediction markets. *See Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 164 (2014) ("[P]ast enforcement against the same conduct is good evidence that the threat of enforcement is not 'chimerical.'" (quoting *Steffel v. Thompson*, 415 U.S. 452, 459 (1974)).

78. The penalties for Underdog's non-compliance with an inapplicable state regulatory regime will be significant, and may be both criminal and civil. Wisconsin has alleged that offering event contracts is a criminal violation and seeks permanent and preliminary injunctive relief to prohibit federally regulated markets from offering such event contracts in Wisconsin. Kalshi et al. Complaint ¶ 92, at 33-34; Polymarket Complaint ¶ 70, at 22-23; OG Complaint ¶ 67, at 22-23. As the CFTC found in the analogous context of New York's enforcement action against Kalshi, such an assertion of state authority "cuts at the very heart of the Commission's jurisdiction and would have significant adverse ramifications for national and international financial markets," New York CFTC Order at 5, and permitting it to proceed would mean "a single State will effectively become the nationwide regulator of event-contract swaps on DCMs" and "threaten[] to unsettle derivatives markets generally." *Id.* at 5, 9.

79. Accordingly, Underdog has no plain, speedy, or adequate remedy at law to address the wrongs described herein and thus seeks injunctive and declaratory relief.

COUNT I

(Express Preemption – Against All Defendants)

80. Plaintiffs incorporate all prior paragraphs by reference.

81. The Supremacy Clause, Article VI, Clause 2, of the U.S. Constitution, provides:

> This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

82. The Supremacy Clause mandates that federal law preempts state law in any field over which Congress has expressly reserved exclusive authority to the federal government.

83. To the extent that the relevant provisions of the CEA and CFTC regulations adopted thereunder overlap with Wisconsin law, and without regard to whether Defendants have correctly interpreted Wisconsin law, Wisconsin law is preempted pursuant to the Supremacy Clause. Congress has expressly reserved exclusive authority over trading on federally regulated derivatives markets by giving the CFTC "exclusive jurisdiction" to regulate derivatives trading on approved exchanges and thus to determine whether trading in particular event contracts is permitted. 7 U.S.C. § 2(a)(1)(A). Granting exclusive jurisdiction to the CFTC aligned with Congress' intent in enacting the CEA, which focused on establishing a unified approach to derivatives regulation and preventing patchwork state regulation, which Congress believed would lead to "total chaos." Senate Hearings, 93d Cong., 2d Sess. 685 (1974) (statement of Sen. Clark).

84. Courts nationwide have agreed that Congress intended to preempt state law in derivatives trading on CFTC-regulated exchanges. *See, e.g.*, *Flaherty*, 172 F.4th at 228; *United States & CFTC v. Minnesota*, No. 26-cv-2661 (KMM/DTS), 2026 WL 2150211, at *9-11, 13 (D. Minn. July 27, 2026); Order at 2-3, *KalshiEX LLC v. Johnson*, No. 2:26-cv-01715 (D. Ariz. Apr. 10, 2026), ECF No. 65; *KalshiEX LLC v. Orgel*, No. 3:26-CV-00034, 2026 WL 474869, at *9-10 (M.D. Tenn. Feb. 19, 2026); *Thrifty Oil Co. v. Bank of Am. Nat'l Tr. & Sav. Ass'n*, 322 F.3d 1039, 1055-57 (9th Cir. 2003); *Am. Agric. Movement*, 977 F.2d at 1156; *Rasmussen v. Thomson*

& McKinnon Auchincloss Kohlmeyer, Inc., 608 F.2d 175, 178 (5th Cir. 1979); *Jones v. B. C. Christopher & Co.*, 466 F. Supp. 213, 220 (D. Kan. 1979); *Hofmayer v. Dean Witter & Co.*, 459 F. Supp. 733, 737 (N.D. Cal. 1978).

85. To the extent that Wisconsin is attempting to enforce its laws—including Wis. Stat. §§ 823.02 and 945.03(1m) (collectively, the "challenged provisions")—against federally regulated derivatives markets, Wisconsin's enforcement is preempted. By threatening to enforce those or any other statutes, and any rules adopted thereunder, against Underdog, Defendants are violating the Supremacy Clause by intruding upon the CFTC's exclusive jurisdiction to regulate derivatives transactions on federally designated contract markets.

86. Therefore, Defendants may not enforce Wisconsin's gaming laws against Underdog because Underdog is a federally regulated derivatives market that operates under the exclusive oversight of the CFTC and its enabling statute, the CEA, 7 U.S.C. §§ 1 *et seq*.

COUNT II

(Field Preemption – Against All Defendants)

87. Plaintiffs incorporate all prior paragraphs by reference.

88. The Supremacy Clause mandates that federal law preempts state law in any field over which Congress has adopted a comprehensive regulatory scheme, thus occupying the field for regulation.

89. To the extent that the relevant provisions of the CEA and CFTC regulations adopted thereunder overlap with Wisconsin law, and without regard to whether Defendants have correctly interpreted Wisconsin law, Wisconsin law is preempted pursuant to the Supremacy Clause.

90. As courts have recognized, "the CEA is recognized as establishing 'a comprehensive system for regulating futures contracts and options'" that grants the CFTC

exclusive jurisdiction. *See, e.g.*, *CFTC v. Reed*, 481 F. Supp. 2d 1190, 1194-95 (D. Colo. 2007) (quoting *Salomon Forex, Inc. v. Tauber*, 8 F.3d 966, 970 (4th Cir. 1993)). That system includes creating the CFTC and vesting it with exclusive authority to regulate derivatives trading, including event contracts. *See* 7 U.S.C. §§ 1 *et seq.*

91. Indeed, federal law authorizes the CFTC to "determine" whether event contracts involving "gaming" should be restricted as "contrary to the public interest," 7 U.S.C. § 7a-2(c)(5)(C)(i)—authority that leaves no room for parallel state regulation over which event contracts can be restricted.

92. Because federal law occupies the entire field of regulating derivatives trading on regulated markets, enforcement of Wisconsin's state laws against federally regulated derivatives markets is field-preempted under the Supremacy Clause. *See Flaherty*, 172 F.4th at 228-29. Accordingly, by threatening to enforce the statutes referenced at ¶ 85 or any other statutes, and any rules adopted thereunder, against Underdog, Defendants are violating the Supremacy Clause by intruding upon the CFTC's exclusive jurisdiction to regulate derivatives transactions on federally designated contract markets.

93. Therefore, Defendants may not enforce Wisconsin's gaming laws against Underdog because Underdog is a federally regulated derivatives market that operates under the exclusive oversight of the CFTC and its enabling statute, the CEA, 7 U.S.C. §§ 1 *et seq*.

COUNT III

(Conflict Preemption – Against All Defendants)

94. Plaintiffs incorporate all prior paragraphs by reference.

95. The Supremacy Clause mandates that federal law preempts state law where compliance with the state law would conflict with federal law.

96. To the extent that the relevant provisions of the CEA and CFTC regulations adopted thereunder conflict with Wisconsin law, and without regard to whether Defendants have correctly interpreted Wisconsin law, Wisconsin law is preempted pursuant to the Supremacy Clause.

97. Defendants' attempts to ban and/or regulate event contracts that federal law and the CFTC have authorized plainly frustrate the CFTC's exclusive authority to regulate its designated exchanges. For that reason among others, the threatened actions are conflict-preempted under the Supremacy Clause. *See Flaherty*, 172 F.4th at 229-30.

98. By threatening to enforce the statutes referenced in ¶ 85 or any other statutes, and any rules adopted thereunder, against Underdog, Defendants are violating the Supremacy Clause by intruding upon the CFTC's exclusive jurisdiction to regulate derivatives transactions on federally designated contract markets.

99. Therefore, Defendants may not enforce Wisconsin's gaming laws against Underdog because Underdog is a federally regulated derivatives market that operates under the exclusive oversight of the CFTC and its enabling statute, the CEA, 7 U.S.C. §§ 1 *et seq*.

PRAYER FOR RELIEF

An actual controversy exists between Underdog and Defendants regarding whether Defendants have legal authority to regulate the trading of event contracts not licensed by the Wisconsin Division of Gaming.

WHEREFORE, Plaintiffs request that judgment be entered in their favor and against Defendants as follows:

1. Enter a declaratory judgment under 28 U.S.C. §§ 2201-2202 stating that the challenged provisions, or any other state laws pertaining to gambling or wagering, as applied to Underdog's designated contract market and its involvement in transactions on designated contract markets, violate the Supremacy Clause and are therefore preempted and unconstitutional;

2. Issue a permanent injunction enjoining Defendants, their officers, employees, successors, and agents, from enforcing the challenged provisions or any other state laws pertaining to gambling or wagering including public nuisance laws, as applied to Underdog's designated contract market and its involvement in transactions on designated contract markets;

3. Award any other relief within this Court's discretion that it deems just and proper.

Dated: September 8, 2026.

REINHART, BOERNER, VAN DEUREN, S.C.

By *[/s/ David G. Palay]*

Allen C. Schlinsog, Jr. (SBN 1025656)
1000 N. Water St., Suite 1700
Milwaukee, WI 53202
Telephone: (414) 298-8214
aschlinsog@reinhartlaw.com

David G. Palay (SBN 1115862)
22 E. Mifflin St., Suite 700
Madison, WI 53703
Telephone: (608) 229-2236
dpalay@reinhartlaw.com

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP

Robert A. Fumerton
(*pro hac vice* forthcoming)
David Meister
(*pro hac vice* forthcoming)
Judith A. Flumenbaum
(*pro hac vice* forthcoming)
One Manhattan West
New York, NY 10001
Telephone: (212) 735-3000
robert.fumerton@skadden.com
david.meister@skadden.com
judy.flumenbaum@skadden.com

Attorneys for Plaintiffs Underdog Exchange DCM, Inc. and UDM, LLC d/b/a Underdog Predict