



CHIESA SHAHINIAN &amp; GIANTOMASI PC

105 Eisenhower Parkway, Roseland, NJ 07068  
csglaw.comADAM K. DERMAN  
Member

aderman@csglaw.com

O 973.530.2027

F 973.530.2227

March 4, 2026

***Via eCourts and Email***Hon. Nicholas Ostuni, Sr., J.S.C.  
Bergen County Courthouse  
10 Main Street, 4<sup>th</sup> Floor  
Hackensack, NJ 07601**Re: Saro Hartounian, et al. v. Van Z. Krikorian,  
Docket No. BER-C-00287-25**

Dear Judge Ostuni:

This firm represents Plaintiffs Hyegate, LLC, Saro Hartounian, and Nareg Hartounian (collectively, “Plaintiffs”) in the above-captioned action. We write concerning the form of Preliminary Injunction Order in connection with the Court’s ruling on February 4, 2026. The parties have extensively conferred and have reached accord on the vast majority of issues, but there remains one issue of contention for which the parties simultaneously submit their respective positions. Therefore, we have agreed with counsel for Defendant Van Z. Krikorian (“Defendant”) to make simultaneous submissions to Your Honor supporting our position.

As the Court will recall, at the end of the two-hour argument, after which the Court entered its ruling that the preliminary injunctive relief sought by Plaintiffs would be entered, counsel for Defendant requested that the Court order that any injunctive relief would “automatically [dissolve] upon the appoint of the arbitrators.” Exhibit A, Feb 4, 2026 Hearing Transcript Excerpts pp. 82-89. The Court swiftly rejected this request noting, “I think you and I both know that’s not how it works.” (Tr. 82:25-83:1). The Court, however, commented that once the arbitrators were empaneled, they could review the injunctive relief entered by this Court’s order. Your Honor asked the undersigned counsel for Plaintiffs’ position as to the same, and I indicated that this was not an issue which was placed before the Court in any briefing and Defendant could make that argument to the arbitrators and we could address it at the time. Id. Tr. 84:15-22. When Your Honor pressed me on the issue, I noted that I did not know whether arbitrators had the power to alter a Court Order. Id.

After conferring extensively with counsel for Defendant, in which Plaintiffs made substantial concessions on the form of order (for example, by agreeing to initiate arbitration proceedings within 20 calendar days of Plaintiffs’ receipt of the injunction order, as opposed to 30 days, and including new language not in the Temporary Restraining Order), the parties reached an impasse on the final paragraph of the Order, concerning the ability of Defendant to apply to the arbitral tribunal to lift,

Hon. Nicholas Ostuni, Sr., J.S.C.

March 4, 2026

Page 2

modify, or alter this Court's preliminary injunction. As a concession on an issue of critical importance which was not briefed, Plaintiffs propose the following language:

**D.** Provided that Plaintiffs timely initiate arbitration proceedings pursuant to Paragraphs B & C above, this Order shall remain in full force and effect during the pendency of such arbitration proceedings; provided, however, ***that nothing in this Order shall be deemed to prevent or prohibit Defendant from applying to the arbitral tribunal to amend or lift the injunctive relief entered herein.***

(Exhibit B, Plaintiffs' Proposed form of Order (emphasis supplied to identify the language in dispute)). Defendants, on the other hand, proposed language which, by virtue of this Court's Order, would expressly empower the arbitral tribunal to review and alter the Court's Order.

We do not think the language proposed by Defendant is consistent with the law or appropriate under the circumstances. We certainly recognize that once the arbitration is filed, the arbitrators will have the power to enter interim measures, including injunctive relief. Indeed, this is set forth in the AAA's Commercial Rules. See R-38 Interim Measures ("The arbitrator may take whatever interim measures he or she deems necessary including injunctive relief and measures for the protection or conservation of property and disposition of perishable goods."). However, this is not the same – and the AAA Rules do not provide for -- the arbitrators modifying an existing Court Order. In fact, our preliminary research indicates that at least under New York law, the arbitral tribunal does not have authority to alter the Court's Order. See Cyprium Therapeutics, Inc. v. Curia Global, Inc., 223 N.Y.S. 3d 520, n.11 (S. Ct. Albany Cnty., 2024) ("The Arbitrator did not (and could not) review the Court's grant of the preliminary injunction . . .").

With this issue of critical importance not having been briefed, in lieu of submitting lengthy letter briefs and for the sake of judicial economy, Plaintiffs have suggested language that would provide Defendant the ability to make an application to the arbitral tribunal *without* stripping Plaintiffs of their rights to oppose such relief on the ground that the tribunal is not empowered to alter a duly-entered order of this Court. It does *not* preclude Defendant from making the application, but rather preserves Plaintiffs' ability to argue, in response to such application, that the arbitral tribunal does not have the authority to alter this Court's Order. If Defendant is correct and the arbitral tribunal has the authority, then such an argument can be presented then. But given that the issue was neither briefed nor part of any relief sought by Defendant, Plaintiffs believe it would be inappropriate to include it in the Preliminary Injunction Order.

In the event that the Court is inclined to include language allowing the arbitral tribunal to amend or vacate this Court's Order, the Court should include language setting forth the standard by which the Order could be amended or vacated: ***nothing shall prevent the arbitral tribunal from amending or vacating the Order upon a showing of changed factual or legal circumstances which would compel the amendment or dissolution of the injunctive relief entered herein.*** Without such language, Defendant will interpret this Court's Preliminary Injunction Order as simply an opportunity for a second bite at the apple.

Hon. Nicholas Ostuni, Sr., J.S.C.

March 4, 2026

Page 3

We appreciate the Court's consideration of these issues.

Respectfully Submitted,

/s/ Adam K. Derman

ADAM K. DERMAN  
Member

cc: counsel of record (via e-Courts)

# EXHIBIT A

SUPERIOR COURT OF NEW JERSEY  
CHANCERY DIVISION, GENERAL  
EQUITY PART  
BERGEN COUNTY  
DOCKET NO. BER-C-00287-25  
APP. DIV. NO. \_\_\_\_\_

<hr/>		
SARO HARTOUNIAN, NAREG	:	
HARTOUNIAN and HYGATE,	:	
LLC,	:	TRANSCRIPT
	:	
Plaintiffs,	:	OF
	:	
v.	:	MOTION
	:	
VAN Z. KRIKORIAN,	:	
	:	
Defendant.	:	
<hr/>		

Place: Bergen County Courthouse  
10 Main Street  
Hackensack, NJ 07601  
(Heard via Zoom)

Date: February 4, 2026

BEFORE:

HONORABLE NICHOLAS OSTUNI, J.S.C.

TRANSCRIPT ORDERED BY:

RENEE M. SHAFRAN, ESQ. (Chiesa Shahinian &  
Giantomasi, PC)

APPEARANCES:

ADAM K. DERMAN, ESQ. - and -  
JAMES M. VAN SPLINTER, ESQ. - and -  
RENEE M. SHAFRAN, ESQ.  
(Chiesa Shahinian & Giantomasi, PC)  
Attorneys for Plaintiffs Saro Hartounian, Nareg  
Hartounian and Hyegate, LLC

Transcriber: Lisa Kane, AD/T 665

Agency: KLJ Transcription Service, LLC  
P.O. Box 352  
Oakland, NJ 07436  
(201) 703-1670

Digitally Recorded  
Operator - Maria Marciano

APPEARANCES (CONT'D):

BRIAN S. COUSIN, ESQ. - and -  
CASEY KATZ PEARLMAN, ESQ. (Fox Rothschild LLP)  
Attorney for Defendant Van Krikorian

## Colloquy

82

1 exactly as I did which is highlighted in the order, so  
2 there's no mistake about it. Okay.

3 MR. DERMAN: No problem.

4 THE COURT: The matter is going to be moved  
5 to arbitration. There's no dispute on that, correct?

6 MR. DERMAN: Correct.

7 MR. COUSIN: Your Honor.

8 THE COURT: Yes.

9 MR. COUSIN: I just want to ask because I --  
10 I didn't include this in my argument because I didn't  
11 know how Your Honor would rule, but if I could just  
12 make one more, really, delayed points. We had  
13 requested in the surrepley certification that there be a  
14 bond that has to be posted in connection with the  
15 preliminary injunction if the Court grants that.

16 And, secondly, we would like to -- to have  
17 clarity of the preliminary injunction that we  
18 understand the law to be that that preliminary  
19 injunction should automatically resolve upon  
20 appointment of the arbitrators. Once the arbitrators  
21 are in place, Mr. Derman can go ahead and file for that  
22 application -- protection before the arbitrators.

23 THE COURT: I don't -- I don't think that --  
24 I don't think how -- that's how the case law works, Mr.  
25 Cousin. And I think you and I both know that that's

## Colloquy

83

1 not how it works. I think how it works is if you make  
2 an argument to the arbitrator that the preliminary  
3 relief that's there should stop, the arbitrators can  
4 make that. It's not a matter of he has to start from  
5 square one. This is a court of law.

6 MR. COUSIN: No, Your Honor, you're  
7 absolutely right in what you just said. But there are  
8 also cases where the court grants injunctive relief in  
9 aid of arbitration and makes it very clear in the  
10 injunction that not only is a, quote, preliminary  
11 injunction, but it's limited to the time that gives --  
12 in other words, gives the parties an opportunity to get  
13 a panel put in arbitration. And there are definitely  
14 orders like that.

15 THE COURT: I understand. Mr. Cousin, if I  
16 -- if I didn't make myself clear the first time around,  
17 I'm going to make it even more clear.

18 I do find that there is a reasonable  
19 likelihood of success on the merits of this case. I  
20 believe that there is a need for this injunctive  
21 relief.

22 I -- I did not -- although I am kind of  
23 mentioning the balancing of status quo in my arguments,  
24 like am I overreaching when I find the likelihood of  
25 success, well, what am I enjoining him from and he

## Colloquy

84

1 can't do those things anyway, let there be no mistake,  
2 I am concerned -- I am concerned enough that I'm going  
3 to deny that application.

4 If the arbitrators after they're empaneled by  
5 application by you to remove any relief, that's what  
6 the law allows.

7 MR. COUSIN: You're right, Your Honor. And I  
8 agree with what you're saying.

9 THE COURT: And so we're clear -- so we're  
10 clear, that is my order. And if it -- and I think it  
11 should be included in the -- in the order.

12 Mr. Derman, do you disagree that the  
13 arbitrators have a right to review whether or not that  
14 stays?

15 MR. DERMAN: I'm not -- I'm not sure. It  
16 sounds like it they would, but this -- these issues  
17 were not presented, you know, before. And that's,  
18 certainly, arbitrators -- he can make that argument to  
19 the arbitration panel and we'll address it at that  
20 time. I just do not see how it's anything that needs  
21 to be addressed now. It's just another new argument  
22 raised by Mr. Cousin on hearing day today.

23 THE COURT: Well --

24 MR. COUSIN: And I take offense to that, Your  
25 Honor, because up until now I haven't said anything

## Colloquy

85

1 that hasn't been in our papers.

2 THE COURT: Mr. Derman --

3 MR. DERMAN: Well, actually, Your Honor --

4 THE COURT: Mr. Derman --

5 MR. DERMAN: Actually, Your Honor, that --

6 THE COURT: Mr. Derman, you -- you have --  
7 you -- you know this. You know this. You know the  
8 cases. You just were about to argue to Mr. Cousin  
9 exactly -- if I didn't know you were going to educate  
10 the Court and Mr. Cousin on when the relief can be  
11 terminated. And you know full well that it -- an  
12 arbitrator can revisit this upon application.

13 So, I'm not going to leave my order to be  
14 ambiguous because it wasn't raised before the Court.  
15 And I'm not going to -- I'm not going to deal with --  
16 I'm not going to deal with a five-day order that causes  
17 me to do more research and review than I did with this  
18 mountain of paperwork to make this decision.

19 My order, consistent with the law. And if I  
20 have to do research on it, then I will include it. But  
21 it -- unless you can tell me that I'm wrong, that my  
22 decision to allow the arbitrator, upon application from  
23 Mr. Cousin, to remove the preliminary relief that I put  
24 in place is not lawful, that is my order.

25 Again, I am making this decision based upon

## Colloquy

86

1 my competent review of the certifications here. I'm  
2 not making a finding beyond that. The arbitrators are  
3 going to dig in. As much as I dug in, the arbitrators  
4 are going to dig in. And if that application is made  
5 prematurely by Mr. Cousin, then I would anticipate the  
6 arbitrator or the panel of arbitrators are going to  
7 say, no, we're not there there -- we're not there yet.

8 MR. COUSIN: Yes, Judge. That makes sense,  
9 Your Honor.

10 THE COURT: But the law -- Mr. Derman, I'm  
11 giving you an opportunity to make an argument. Did --  
12 do you disagree that the law allows me to do this?

13 MR. DERMAN: That -- I think I said to Your  
14 Honor that -- that sounds right, but I haven't looked  
15 at the issue as -- I mean, my understanding, Your  
16 Honor, look, I'm not arguing with you. It's -- the law  
17 is what it is. My understanding is the arbitrators  
18 take over the map. Can they issue an order that undos  
19 [sic] Your Honor's order? I don't -- I don't know  
20 exactly, but I'm not opposed to it. That makes  
21 (indiscernible).

22 THE COURT: Well, you seem to be arguing  
23 against the inclusion of that language in the order.  
24 That's what we're doing right now.

25 MR. DERMAN: Yeah, I think that that --

## Colloquy

87

1 THE COURT: He wanted -- so, we're clear.  
2 Mr. Cousin wanted my preliminary order to evaporate  
3 upon the selection of a panel.

4 MR. DERMAN: Correct.

5 THE COURT: And you were opposed to that.  
6 And I'm opposed to that. Based upon my review of the  
7 evidence and the reasonable likelihood of success on  
8 the merits, I'm opposed to it. However, this matter is  
9 not going to be litigated in front of me.

10 If -- if this wasn't -- let me just clarify  
11 something.

12 MR. DERMAN: Okay.

13 THE COURT: If this wasn't an arbitration  
14 case, if this was just preliminary injunctive relief  
15 that I'm granting today and the case was going to  
16 remain before me, as the case progresses, as evidence  
17 comes about, documents, depositions, additional sworn  
18 testimony, witness statements, it wouldn't be the first  
19 time an applicant who had injunctive relief granted  
20 against them came back to the Court and said, Judge,  
21 now that we've gotten a little further along in this  
22 litigation, at this time we'd like you to revisit the  
23 relief that you've granted the last time.

24 Now, it's not likely to happen in a case like  
25 we're talking about now when I'm simply telling Mr.

## Colloquy

88

1 Krikorian you can't do things that violate your  
2 fiduciary obligations. And you may very well have the  
3 arbitrator or panel of arbitrators say the same exact  
4 thing that I'm saying today because they'll review this  
5 record.

6 But the reality is, at some point in time,  
7 when this is being litigated in front of an arbitration  
8 panel, I presume, they need to have the ability and I  
9 think the law allows especially if I give it, the  
10 ability to look at this thing as it's progressing and  
11 say we're going to change this. We should change this.

12 I don't know why they would when -- go ahead.

13 MR. DERMAN: On top of that, Your Honor, it  
14 -- it -- it was something raised in my opinion for the  
15 first time just now. I don't have a problem with it.

16 THE COURT: What I -- all right. Mr. Derman,  
17 what I'm trying to avoid, though, is another  
18 application and another -- this is fairness. I sit  
19 here as in the court of equity, I think this is fair.  
20 I read your application, I read your evidence, I read  
21 your complaint. I -- I made rulings.

22 Mr. Cousin has the right to appeal my  
23 rulings. I made my findings, gave everybody a chance  
24 to argue. But I -- in my -- if this case was to remain  
25 here, I would reserve the right to review this

## Colloquy

89

1 injunctive relief at any portion throughout this  
2 litigation. And I think the same should be held by  
3 anybody who's going to be overseeing and managing this  
4 litigation. This is simply the basis of my equitable  
5 point.

6 So, if you don't have a problem, make sure  
7 you include it in the order. If you do have a problem  
8 with it, I'm going to include in the order unless I'm  
9 convinced that that is wrong. But I, again --

10 MR. DERMAN: I -- I'm sorry, Your Honor.

11 THE COURT: When you're new to this --

12 MR. DERMAN: (Indiscernible).

13 THE COURT: When you're new to this and I  
14 think everybody knows, I'm sure everybody has done  
15 their research on Judge Ostuni, he's new to Chancery.  
16 He's been on the bench three years. The one good thing  
17 about having a judge that is new is he reads  
18 everything. And I try to become an expert in every  
19 little bit that's before me because it's all new to me.

20 This is a situation that I'm fully aware of  
21 and I believe -- I believe that it's right. And I  
22 believe I have the ability to do it. And more  
23 important than all of that is I believe that it  
24 fundamentally fair and equitable to allow that to  
25 happen if it's appropriate.

CERTIFICATION

I, LISA KANE, the assigned transcriber, do hereby certify the foregoing transcript of proceedings on CourtSmart, Index No. from 2:20:13 to 4:21:22, is prepared to the best of my ability and in full compliance with the current Transcript Format for Judicial Proceedings and is a true and accurate compressed transcript of the proceedings, as recorded.

/s/ Lisa Kane

Lisa Kane

AD/T 518

AD/T Number

KLJ Transcription Service

Agency Name

02/11/2026

Date

# EXHIBIT B

Adam K. Derman, Esq. (007131995)  
James Van Splinter, Esq. (019382005)  
Renée M. Shafran, Esq. (289262019)  
CHIESA SHAHINIAN & GIANTOMASI PC  
105 Eisenhower Parkway  
Roseland, NJ 07068  
973.325.1500  
aderman@csglaw.com  
jvansplinter@csglaw.com  
rshafran@csglaw.com  
*Attorneys for Saro Hartounian,  
Nareg Hartounian, and Hyegate, LLC*

SARO HARTOUNIAN, NAREG  
HARTOUNIAN and HYEGATE, LLC,

Plaintiffs,

vs.

VAN Z. KRIKORIAN,

Defendant.

SUPERIOR COURT OF NEW JERSEY  
CHANCERY DIVISION: BERGEN  
COUNTY

DOCKET NO. BER-C-000287-25

Civil Action

**ORDER GRANTING PRELIMINARY  
INJUNCTION**

**THIS MATTER** having been opened to the Court by way of application, by Order to Show Cause with Temporary Restraints, of Chiesa Shahinian & Giantomasi PC, counsel for Plaintiffs Saro Hartounian (“Saro”), Nareg Hartounian (“Nareg”), and Hyegate, LLC (“Hyegate”) (collectively, “Plaintiffs”), for the entry of an Order of Preliminary Injunction pursuant to Rule 4:52-1 of the New Jersey Court Rules enjoining Defendant Van Z. Krikorian (“Defendant”) from (i) taking any unilateral action on purported behalf of Hyegate and/or its subsidiaries DAP LLC (“DAP”) and Aragats Perlite OJSC (“AP”) (collectively, the “Subsidiaries”) during the pendency of this litigation; (ii) publicizing or disseminating to third-parties any Confidential Information of Hyegate and/or the Subsidiaries; (iii) taking any action adverse to the business interests of Hyegate and/or the Subsidiaries; and (iv) taking any action

that would violate the Amended and Restated Limited Liability Company Operating Agreement of Hyegate LLC and/or the governing documents of any of the Subsidiaries; and granting such other relief as the Court deems just and proper; Defendant having notice of Plaintiffs' application; and the Court having considered:

- Plaintiffs' December 9, 2025 Verified Complaint and the Exhibits attached thereto;
- Plaintiffs' December 9, 2025 Memorandum of Law in support of their application for a Preliminary Injunction with Temporary Restraints;
- Defendant Van Z. Krikorian's December 22, 2025 Memorandum of Law in support of his application to stay this action and compel arbitration;
- The December 22, 2025 Certification of Jose M. Jara, Esq. and Exhibits attached thereto;
- Plaintiffs' January 2, 2026 Memorandum of Law in opposition to Defendant's application to stay this action and compel arbitration;
- Defendant's January 7, 2026 Reply Memorandum of Law in further support of Defendant's application to stay this action and compel arbitration;
- Defendant's January 21, 2026 Memorandum of Law in opposition to Plaintiff's application for a Preliminary Injunction;
- The January 21, 2026 Certification of Defendant Van Z. Krikorian and Exhibits attached thereto;
- Plaintiffs' January 28, 2026 Memorandum of Law in further support of their application for a Preliminary Injunction;
- The January 28, 2026 Certification of Plaintiff Saro Hartounian and Exhibit attached thereto;
- The January 28, 2026 Certification of Plaintiff Nareg Hartounian;
- The January 28, 2026 Certification of Adam K. Derman, Esq. and Exhibits attached thereto;
- The February 2, 2026 (corrected on February 3, 2026) sur-reply Certification of Defendant Van Z. Krikorian and Exhibits attached thereto;

and the Court having conducted a hearing on the Order to Show Cause with Temporary Restraints

on January 9, 2026 during which the Court heard and considered the arguments of counsel and a brief statement under oath of Defendant Van Z. Krikorian and the Court having entered a Temporary Restraining Order on January 20, 2026; and the Court having conducted a hearing on Plaintiffs' application for preliminary injunctive relief on February 5, 2026 during which the Court heard and considered the arguments of counsel; and for the reasons set forth on the record at the February 5, 2026 hearing, and good cause having been shown,

**IT IS** on this \_\_\_ day of March, 2026

**ORDERED** that:

A. Defendant is hereby preliminarily enjoined from: (i) taking any unilateral action on behalf of Hyegate and/or the Subsidiaries during the pendency of this litigation, (ii) publicizing or disseminating to third-parties any Confidential Information of Hyegate and/or the Subsidiaries; (iii) taking any action adverse to the business interests of Hyegate and/or the Subsidiaries; and (iv) taking any action that would violate the Amended and Restated Limited Liability Company Operating Agreement of Hyegate LLC and/or the governing documents of any of the Subsidiaries; **however, the terms of this preliminary injunction are not intended, and shall not be construed, to prevent Defendant from any legally protected activities;**

B. Pursuant to the Court's January 20, 2026 Order, upon the entry of the within Order, this matter shall be stayed pending the completion of arbitration between the parties concerning the claims set forth in the Verified Complaint (the "Claims") or pending any decision by the Arbitrators as to the lack of arbitrability of any or all of the Claims.

C. Plaintiffs shall initiate arbitration proceedings with the New York City, New York branch of the American Arbitration Association concerning the Claims within twenty (20) calendar days of Plaintiffs' receipt of this entered Order (by electronic notification or other

means). If Plaintiffs fail to timely initiate said arbitration proceedings the preliminary injunctive relief set forth in Paragraph A of this Order shall expire upon the expiry of twenty (20) calendar days from the date of their receipt of this entered Order (by electronic and other means).

D. Provided that Plaintiffs timely initiate arbitration proceedings pursuant to Paragraphs B & C above, this Order shall remain in full force and effect during the pendency of such arbitration proceedings; provided, however, **that nothing in this Order shall be deemed to prevent or prohibit Defendant from applying to the arbitral tribunal to amend or lift the injunctive relief entered herein.**

[**OR, IN THE ALTERNATIVE:** D. Provided that Plaintiffs timely initiate arbitration proceedings pursuant to Paragraphs B & C above, this Order shall remain in full force and effect during the pendency of such arbitration proceedings; provided, however, **that nothing in this Order shall be to prevent the arbitral tribunal from amending or vacating the Order upon a showing of changed factual or legal circumstances which would compel the amendment or dissolution of the injunctive relief entered herein.**]

E. A copy of this Order shall be served on all parties within \_\_\_ days of its receipt by counsel for Plaintiffs.

---

HONORABLE NICHOLAS OSTUNI, SR, J.S.C.