

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

**MEMORANDUM OF LAW IN OPPOSITION TO DEFENDANT'S
APPLICATION FOR ORDER TO SHOW CAUSE WITH TEMPORARY RESTRAINTS**

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PRELIMINARY STATEMENT

Krikorian's¹ application for an Order to Show Cause should be denied for the simple reason that it is contrary to the law and the very rules of the American Arbitration Association (AAA) which expressly provide that courts can and should hear claims for immediate, injunctive relief despite the existence of an arbitration clause. Krikorian argues that this matter should immediately be stayed in favor of arbitration because the Hyegate Operating Agreement contains an arbitration clause providing for arbitration before the AAA. While there may be an arbitration provision that will provide for the *ultimate* arbitration of *certain* claims, the simple fact is that the law plainly provides that, *notwithstanding* an arbitration provision in a contract, parties are nevertheless free to seek immediate, emergent, injunctive relief in the Court system. That, of course, is exactly what Plaintiffs have done – they are seeking emergent, necessary (and very simple) relief restraining Krikorian from continuing in his campaign of destruction to tear Hyegate and its affiliated entities down while he attempts to wrest control of it from Saro and Nareg, the majority members.

The relief sought by Plaintiffs is simple and straightforward and by all accounts something that Krikorian should have agreed to in any of the numerous times Plaintiffs attempted to resolve this matter before bringing their application, including:

- (i) Enjoining Krikorian from disclosing confidential information of Hyegate or its subsidiaries;
- (ii) Enjoining Krikorian from taking action adverse to or detrimental to Hyegate or its subsidiaries; and
- (iii) Directing Krikorian to abide by the directives and resolutions of the majority owners of Hyegate.

¹ All defined terms share their meaning as set forth in the Verified Complaint, which was filed on December 9, 2025, contemporaneously with Plaintiffs' application for an order to show cause with temporary restraints.

Without this relief, and should Krikorian be permitted to proceed with the destructive course of conduct he is currently pursuing, there will be nothing left to arbitrate. Thus, regardless of whether the ultimate merits of any of Plaintiffs' claims will be adjudicated in arbitration, this Court is absolutely the proper forum to address and provide the emergent relief Plaintiffs seek to stop Krikorian from destroying Hyegate before those claims can be addressed and the temporary restraints and injunction sought by Plaintiffs should be entered.

Moreover, Krikorian's application is in all events overbroad. The Verified Complaint sets forth claims belonging to the entity Hyegate *and* individual claims of Saro and Nareg – including claims for defamation against them personally. Saro and Nareg are not individually parties to the Hyegate Operating Agreement or any arbitration provision contained therein and there is therefore no reason why their individual claims should be compelled to be brought in any forum besides this Court, or any legal basis to compel that outcome. Indeed, to the extent that the Court determines that certain claims are subject to arbitration, the balance of the claims can proceed in this Court or the Law Division against Krikorian.

In summary, there is nothing urgent about Krikorian's application and it should have been brought by motion in the normal course. The law is clear that courts can and should grant immediate, injunctive relief if the movants meet their burden regardless of whether there is an arbitration clause. Accordingly, Defendants' application to immediately stay this matter, prior to the entry of Plaintiffs' restraints, should be denied. Thereafter, the Court can decide which claims should proceed to arbitration and which should remain in the court system.

FACTS/ PROCEDURAL HISTORY

The facts giving rise to this action and the pending applications for temporary restraints are set forth in the Verified Complaint and in Plaintiffs' pending application for a preliminary injunction with temporary restraints. In very brief summary, this matter involves the actions of Krikorian, a long-time associate of Saro and Nareg and the long-time *attorney* for Saro and Nareg's business Harco Industries, Inc USA. In 2017, Krikorian persuaded Saro to invest in AP, an Armenian mining company. *See* Verified Complaint, ¶¶ 16-18. Nareg joined the venture, and Saro and Nareg put up *all* of the money which was used to invest in AP (and all of the money subsequently utilized to maintain AP's operations). *See id.*, ¶¶ 20-21. AP is owned by an entity named DAP, and DAP in turn is owned by Hyegate, of which Saro, Nareg and Krikorian are all one-third members. *See id.*, ¶¶ 20. Again, Krikorian contributed zero funds to this venture – rather, he was to provide legal counsel to the enterprise and to use his experience in the mining industry in Armenia to help manage the mining and legal operations of the enterprise. *See id.* The Verified Complaint details Krikorian's failures and shortcomings in his role.

Saro and Nareg initially invested \$825,000 in the venture. Over time, Krikorian pressured Saro to continue to invest more capital into it. All told, Saro and Nareg invested approximately \$3.3 million into the venture. *See* Verified Complaint at ¶¶ 21, 22.

In fall the of 2025, Saro finally pushed back on investing more money in the entity. Although Krikorian purported to help Plaintiffs sell their interest in Hyegate, instead, he attempted to wrest full control of Hyegate and AP from Saro and Nareg for himself. Krikorian presented Saro with completely unfair terms for his proposed purchase -- ***which included immediately turning over all of their interest in Hyegate to Krikorian.*** And demanded Saro assent to those lopsided terms within one day. When Saro demurred, he threatened Saro that if he did not agree to new – even worse terms, he would invite Armenian government inspectors and regulators to

investigate AP for purported “illegal” activity (he ultimately carried through on this threat), and indeed threatened AP with bankruptcy. *See id.*, ¶ 52.

Krikorian also waged a campaign of lies and innuendo against Saro and Nareg personally, circulating in the close-knit Armenian community the false rumor that Saro approached him and offered his and Nareg’s Hyegate shares to Krikorian because he is desperately in need of money, and claiming that Nareg was involved in some “illegality” (and that Saro was complicit in it, or accepting of it). *See id.*, ¶ 78.

Repeatedly, Saro and Nareg asked Krikorian to stop, and as a minority, one-third member of Hyegate, not to take any actions purportedly on AP’s or Hyegate’s behalf. Krikorian refused, and ultimately, Saro and Nareg, through counsel provided notice to Krikorian of a Special Meeting of the Managers of Hyegate to resolve and affirm that Krikorian does not have authority to approve or make any decisions unilaterally on behalf of Hyegate. Krikorian refused to attend the meeting, which was held on November 20, 2025 at which Resolutions (dated November 26, 2025) were passed affirming the same. *See id.*, ¶¶ 63-66. Krikorian ignored these Resolutions, and instead increased the ferocity of his campaign of destruction.

As noted, on or about November 17, 2025 he made a complaint to Armenian authorities that AP was somehow out of compliance with Armenian labor laws (notwithstanding the fact that such compliance would have fallen within the ambit of his duties as the manager of AP’s legal affairs). *See id.*, ¶ 67. And worse, in late November 2025 he engaged in a lengthy series of communications with AP’s prime customer and distributor in which he claimed, among other things, that Nareg was “implicat[ed] in “illegal”, “criminal” matters, and that AP was somehow in violation of (nonexistent) exclusivity provisions supposedly belonging to that customer – essentially inviting a lawsuit against AP. *See* ¶¶ 69-75. Indeed, on November 28, 2025, Krikorian

went so far as to send sensitive, confidential business information of AP to that customer in plain violation of his fiduciary duties as a Manager and Member of Hyegate, and also in violation of Hyegate's Operating Agreement – and yet again accused Saro and Nareg of “clearly being involved in covering up or participating in illegal and criminal matters,” *and* claimed that AP his facing a “bankruptcy threat.” *See id.*, ¶¶ 77, 78, 81. All of these communications were directed to AP's primary customer. There can be only one reason Krikorian is – right now – doing all of this – to devalue AP so that Krikorian can get what he so desperately wants, AP, on *his* completely unfair terms.

All of this – and more – is extensively recited and documented with exhibits in the Verified Complaint filed by Plaintiffs on December 9, 2025. Indeed, that Verified Complaint and the accompanying application for a preliminary injunction was filed precisely to stop this ongoing, pervasive, and malicious behavior by Krikorian which is calculated to destroy AP, and thus Hyegate. The Complaint also brought claims by Saro and Nareg individually related to his tortious actions directed at them personally – namely his defamation of them. *See* Verified Complaint, Count III.

The injunctive relief sought by Plaintiffs is extremely measured and calculated to protect Hyegate during the pendency of litigation – merely to prevent Krikorian from doing *things he unquestionably should not be doing*. Specifically, in their application, Plaintiffs seek temporary restraints and an injunction restraining Krikorian from: (i) from taking any unilateral action on purported behalf of Hyegate and/or its subsidiaries during the pendency of this litigation, (ii) from publicizing or disseminating to third-parties any Confidential Information of Hyegate and/or its subsidiaries; (iii) from taking any action adverse to the business interests of Hyegate and/or its subsidiaries; and (iv) from taking any action that would violate the Hyegate Operating Agreement

or any of the governing agreements for Hyegate’s subsidiaries. That is all – and none of that should be controversial.

As noted, Plaintiffs filed their application on December 9, 2025, and delivered a copy of the filed papers to Mr. Krikorian via email on that same day. Pursuant to directive from the Court, on December 16, 2025, Plaintiffs served Mr. Krikorian with a copy of the papers along with notice that the hearing would be held on January 5, 2026.² *See* Jara Cert., Ex. 1.³

Krikorian filed his application for an order to show cause seeking the immediate stay of this entire action in favor of arbitration in the evening of December 22, 2025; and it was electronically served on Plaintiffs on the morning of December 23, 2025.

LEGAL ARGUMENT

I. KRIKORIAN’S APPLICATION FOR AN IMMEDIATE STAY SHOULD BE DENIED.

A. There is No Cause to Stay Any Portion of This Matter Prior to the Entry of the Restraints Sought by Plaintiffs.

Krikorian’s application should be denied because it ignores critical and well-established law that permits courts to hear applications for injunctive relief despite the existence of an arbitration clause. While the Hyegate Operating Agreement does provide for arbitration of certain claims, as a matter of law, *nothing* precluded Plaintiff from seeking the simple, necessary and emergent relief it seeks before this Court, on an emergent basis.

² The date of the hearing was subsequently changed to January 9, 2026.

³ Plaintiffs do not have any idea what Krikorian is talking about in his brief when, referencing this service letter, he alludes to some concept that Plaintiffs’ counsel may be a “necessary witness” in this matter.

Krikorian claims New York law governs the within dispute. But CPLR § 7504(c) plainly provides the court “may entertain an application . . . for a preliminary injunction in connection with an arbitration that is pending *or is to be commenced* inside or outside this state . . . upon the ground that the award to which the applicant may be entitled may be rendered ineffectual without such provisional relief.” (emphasis added); *see also Matter of Rockwood Pigments NA, Inc. v. Elementis Chromium LP*, 124 A.D.3d 509, 510-511 (1st Dep’t 2015) (granting injunction to preserve status quo notwithstanding agreement between parties “that all disputes arising out of or relating to the agreement ... shall be submitted to arbitration”); *see also Sherrill v. Grayco Builders, Inc.*, 64 N.Y.2d 261, 273 (1985) (“[W]here urgent need to preserve the status quo requires some immediate action which cannot await the appointment of arbitrators, waiver will not occur[.]”); *P.S. Finance, LLC v. Eureka Woodworks, Inc.*, 214 A.D.3d 1, 13 (2d Dep’t 2023) (same). Indeed, New York courts have held that courts “retain the power, and the responsibility, to consider applications for preliminary injunctions while a dispute is being arbitrated.” *Cyprium Therapeutics, Inc. v. Curia Glob., Inc.*, 18 Misc. 3d 1238(a), at *5 (Albany Cnty. Sept. 12, 2022)

Krikorian further cites to the Federal Arbitration Act, but under that law too, “[w]here the parties have agreed to arbitrate a dispute, a district court has jurisdiction to issue a preliminary injunction to preserve the status quo pending arbitration. The standard for such an injunction is the same as for preliminary injunctions generally.” *Benihana, Inc. Benihana of Tokyo, LLC*, 784 F.3d 887, 894-95 (2d Cir. 2014) (citations omitted) (upholding grant of preliminary injunction barring licensee from selling unauthorized food items or using trademarks in a manner not approved by license agreement notwithstanding arbitration provision in license agreement). For example, in *General Mills, Inc. v. Champion Petfoods USA, Inc.*, 2020 WL 915824 at * 3 (S.D.N.Y. Feb. 26, 2020), the Court denied a motion to vacate a preliminary injunction enjoining

defendant from working for competitor or disclosing plaintiff's confidential information pending arbitration. The Court noted "[p]ro arbitration policies reflected in . . . Supreme Court decisions are furthered, not weakened by a rule permitting a district court to preserve the meaningfulness of arbitration through a preliminary injunction. Arbitration can become a 'hollow formality' if parties are able to alter irreversibly the status quo before arbitrators are able to render a decision in the dispute." (quoting *Blumenthal v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 910 F.2d 1049, 1053 (2d Cir. 1990)); *Citizens Securities, Inc. v. Bender*, 2019 WL 3494397 at *5 n1 (N.D.N.Y. Aug. 1, 2019) (granting temporary restraining order restraining defendant, among other things, soliciting clients of his former employer or utilizing or disseminating confidential information, and noting :the Court has jurisdiction to issue a temporary restraining order/preliminary injunction to preserve the status quo pending arbitration.") Indeed, "district courts have been reversed where they have adopted the erroneous view that the 'decision to refer the dispute to arbitration strip[s] the court of power to grant injunctive relief.'" *General Mills, Inc.*, 2020 WL 915824 at * 3, quoting *Roso-Lino Beverage Distribs., Inc. v. Coca-Cola Bottling Co. of N.Y.*, 749 F.ed 125, 125 (2d Cir. 1984) and citing *Am. Exp. Fin. Advisors Inc. v. Thorley*, 147 F.3d 229, 231 (2d Cir. 1998) ("[T]he expectation of speeding arbitration does not absolve the district court of its responsibility to decide requests for preliminary injunctions on their merits.")

New Jersey law holds the same. See *Rosenstein v. State, Dep't of Treasury, Div. of Pensions & Benefits*, 438 N.J. Super. 491, 497-98 (App. Div. 2014) ("[T]here is no doubt that courts are empowered to intervene in a dispute pending in some other forum for the purposes of preserving the thing in dispute in that forum."); *Ortho Pharm. Corp. v. Amgen, Inc.*, 882 F.2d 806, 812 (3d Cir. 1989) (recognizing a court's authority to enter injunctive relief to preserve the status quo pending institution and completion of arbitration proceedings).

And indeed, while Krikorian claims that this matter should be arbitrated under the Rules of the AAA, the very Rules for Commercial Arbitration of the AAA provide for exactly the same as well – i.e., that withstanding an arbitration provision, a party is fully entitled to seek emergent relief through the Court system. *See* [2025_commercialrules_web.pdf](#), AAA Rules of Commercial Arbitration, R-38(c) (“A request for interim measures addressed by a party to a judicial authority *shall not be deemed incompatible with the agreement to arbitrate* or a waiver of the right to arbitrate.”) (emphasis added).

Thus, in filing its application for an order to show cause before this court, prior to the arbitration of any claims, Plaintiffs fully and completely comported with the applicable law, and indeed the very Rules of the arbitral body to which Krikorian points. Given the facts outlined and documented in detail in the Verified Complaint, Plaintiffs had no other option – as recently as *days* before Plaintiffs made their application, Krikorian, in his campaign of destruction, disseminated confidential information to third parties and accused Hyegate’s subsidiary of violating contracts with a customer *to that customer*. He did all of this not only in complete dereliction of his duties, but also in the face of plain Resolutions of Hyegate compelling him to cease this outlandish and destructive behavior. The imminent, direct harm to the sole ultimate asset of Hyegate, namely, AP, could not be clearer. Emergent relief is and remains more than warranted, and without it, Hyegate’s very existence is in jeopardy.

And of course, to make its necessary application, Plaintiffs were compelled under our Court Rules to do precisely what they did – file a verified pleading demonstrating the facts of the matter, their likelihood of success on the merits, and the strong need for immediate court intervention to preserve Hyegate as a going concern. *See, e.g., Crowe v. DeGioia*, 90 N.J. 126, 132–34 (1982), *aff’d*, 102 N.J. 50 (1986).

Simply put under all circumstances and regardless of whether any portion of this case is ultimately arbitrated, it is crystal clear that Plaintiffs did exactly the right and proper thing in the face of Krikorian’s destructive behavior – they sought court intervention, on an emergent basis, to stop it. There is simply no reason – and Krikorian provides no reason⁴ – why an injunction cannot be entered here.

B. Saro and Nareg’s Individual Claims Are Not Subject to Any Arbitration Provision.

For the reasons set forth above, no portion of this matter should be stayed *at least* until the Court adjudicates Plaintiffs’ application for emergent relief which seeks merely the preservation of Hyegate and its subsidiaries. Plaintiffs’ entitlement thereto is a matter of black-letter law (and the Rules of the AAA) and should not be controversial.

But Krikorian’s application suffers from a second defect – it is overbroad. It seeks to stay this *entire* matter and sweep it into arbitration. As noted, which claims, precisely, may or may not be subject to arbitration need *not* be addressed at this time – as set forth in Argument Section I above, the Court absolutely has jurisdiction to address Plaintiffs’ application for temporary restraints and a preliminary injunction under all circumstances. Ultimately, however, it is plain that not all of the claims in this case are arbitrable. As is clear from the Verified Complaint, Saro and Nareg have their own, individual claims, and they never agreed to arbitrate any of them.

“[A] party will not be compelled to arbitrate absent evidence that affirmatively establishes an express agreement to do so.” *JMT Bros. Realty, LLC v. First Realty Builders, Inc.*, 51 A.D.3d 453,

⁴ The cases cited by Krikorian are all inapposite. They all stand for the non-controversial proposition that Courts generally favor the enforcement of arbitration provisions to arbitrate the ultimate resolution of *claims* that are subject thereto. None of them contradict the plain fact that, notwithstanding any arbitration provision, a court is fully empowered (under the law, and here, also under the very rules of the arbitral body to which Krikorian points) to provide *emergent*, injunctive relief to protect the *res* of the subject matter of any potential arbitration.

455 (1st Dep’t 2008) (ruling trial court erred in denying defendant’s cross motion to stay arbitration of claims against him individually since he signed the arbitration agreement merely in his capacity as president of the entity at issue); *see also Adago v. Sy*, 205 A.D.3d 602, 602-03 (1st Dep’t 2022) (“[N]o other evidence in the record affirmatively establishes an agreement for the *individual* parties to arbitrate, and a party will not be compelled to proceed to arbitration without an express agreement to do so.”) (emphasis added); *Matter of Metamorphosis Constr. Corp. v. Glekel*, 247 A.D.2d 231 (1st Dep’t 1998) (“[T]he court properly stayed arbitration of the counterclaim against petitioner’s president since he did not contract with respondent or agree to arbitration in his individual capacity.”)

When assessing the arbitrability of claims, Courts assess on a claim-by-claim basis. *See Primavera Labs v. Avon Prods.*, 297 A.D.2d 505, 505-06 (1st Dep’t 2002) (“The threshold determination of whether there is a clear, unequivocal and extant agreement to arbitrate the disputed claims is to be made by the court and not the arbitrator . . . and arbitration clauses, as contractual agreements, must be enforced according to their terms, even if the result is bifurcated litigation.”) (internal citations omitted).

Here, while certain claims may be subject to arbitration, others are not. For example, in Count III, Saro and Nareg assert claims of defamation against Krikorian. These actions by Krikorian were directed at Saro and Nareg personally and harm them notwithstanding the existence (or lack thereof) or any Operating Agreement of Hyegate. Similarly, in Count V, Saro and Nareg have alleged fraud individually against Krikorian based on their reliance on Krikorian’s representations (built on trust from his years as general counsel to Harco). Saro and Nareg never agreed to arbitrate any claims they, individually, would have against Krikorian. Thus, there is no basis to compel the arbitration of those claims under any circumstances.

Thus, the Court should deny Krikorian's application because there is no emergency. The law is clear that a Court can and should consider an application for immediate, injunctive relief despite the existence of an arbitration clause. After the Court makes that ruling, Krikorian can move in the normal course to compel arbitration. At that point, the Court can decide which if any claims should be subject to arbitration and whether they should remain in this Court or be heard in the Law Division.

CONCLUSION

For the foregoing reasons, Plaintiffs Saro Hartounian, Nareg Hartounian, and Hyegate, LLC respectfully request that the Court deny Krikorian's application for a stay.

Respectfully submitted,

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Dated: January 2, 2026