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-00287-25

MEMORANDUM OF LAW IN FURTHER SUPPORT OF PLAINTIFFS' APPLICATION FOR A PRELIMINARY INJUNCTION

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PRELIMINARY STATEMENT[1]

Defendant had *forty-three* days to respond to Plaintiffs' application for, very simple, injunctive relief (which merely requires Defendant to do what he should already be doing: refraining from (i) taking any unilateral action on behalf of Hyegate and its subsidiaries (ii) publicizing or disseminating to third-parties any confidential information of Hyegate and its subsidiaries, (iii) taking any action adverse to the business interests of Hyegate and its subsidiaries, and (iv) taking any action that would violate Hyegate's Operating Agreement and the governing documents of any of its subsidiaries.

Instead of responding to the key allegations or explaining the reason for his conduct, he filed a thirty-page certification which boasts about his curriculum vitae, attacks the character and background of Saro and (particularly) Nareg, and places his own spin on the operations of AP over the course of the years. But he does not–because he cannot–contradict the core, inescapable facts which necessitated Plaintiffs' application. To wit, beginning in October 2025, Defendant–as part of his campaign to wrest AP from Saro and Nareg for a song and for no up-front consideration–escalated a campaign of destruction against AP which included sharing confidential information with AP's primary customer and distributor, and inviting that same customer to *sue* AP. The more Saro and Nareg asked Defendant to stop, the more he escalated–and that is why this injunction is necessary.

Nor does he address, challenge, or dispute that he ignored Plaintiffs' repeated requests for Defendant to agree to cease taking action on behalf of or adverse to Hyegate, DAP, or AP, which is what led to the scheduling of the Special Meeting and this application. Defendant barely addresses these issues, instead arguing that the information he shared with the customer is not

[1] All defined terms retain their meaning as set forth in Plaintiffs' original application.

"confidential." This argument is risible. One need only glance at Exhibit DD to the Complaint, filed under seal, which contains, among other things, AP's bank accounts and loan balances–information that is undoubtedly confidential and certainly not to be shared with parties having adverse business interests of AP. Moreover, while Defendant argues that the information is publicly available, he provides no examples or evidence to support this contention. And Defendant's fallback argument–that the confidential information he willfully disseminated belongs to AP, and not the Hyegate–is similarly baseless. As set forth in Plaintiffs' moving papers, and as cannot be contradicted, Hyegate exists solely to own DAP, which in turn exists solely to own AP. This structure was crafted by Defendant, and the ownership and operations of AP is the *sole* reason for Hyegate's existence. To argue that disseminating confidential information concerning, among other things, AP's financial state, to the very party Defendant was egging on to sue AP would not threaten Hyegate with irreparable harm, or does not violate Hyegate's Operating Agreement, or does not constitute a breach of Defendant's fiduciary duty to Hyegate, is absurd. Indeed, the very need for the injunctive relief sought by Plaintiffs is demonstrated by Defendant's own filing. In his effort to distract, Defendant publicly filed, as Exhibit 1 to his certification, a spreadsheet created by Saro–indeed, at Krikorian's request and urging and in the context of Defendant's efforts to purchase AP–which contains *still more* confidential information. This, of course, violates the existing TRO against Defendant and demonstrates, conclusively, that he will not stop absent Court intervention.

At oral argument, Defendant and his counsel attempted to suggest that Defendant's conduct was justified or protected because he was a whistle blower or engaging in legally protected activity. Indeed, Defendant's certification goes on extensively about what considers to be improper or illegal conduct at AP during his tenure. This is a complete red herring. Defendant does not in any

way connect or tie this supposed improper conduct to his actions. He does not use it to explain why he attempted to take over Hyegate from Saro or Nareg; why he attempted to bait the customer to sue AP; or why he disclosed confidential information. And Defendant barely mentions it in his opposition brief. In fact, the arguments make no sense on their face. If AP was such a bad operation, why would Defendant have attempted to buy it from Saro and Nareg.

For these reasons, and those set forth in Plaintiffs' moving papers and at the TRO hearing, the Court should enter obvious, but sadly necessary, injunctive relief sought by Plaintiffs.

STATEMENT OF FACTS[2]

I. FACTS PERTINENT TO THE PENDING APPLICATION

The primary facts which give rise to Plaintiffs' application for injunctive relief–not necessarily their entire claims–are set forth in Paragraphs 48 through 85 of the Complaint. Specifically, beginning in October 2025, contemporaneous with his efforts to purchase AP from Saro and Nareg for no upfront consideration (but an immediate transfer of Saro and Nareg's interest), Defendant began a campaign of destruction directed against AP (and course, by virtue of that, against Hyegate, which ultimately owns AP). He threatened AP with bankruptcy. (See Compl. ¶ 48). He threatened to instigate criminal investigations against AP should Saro and Nareg not agree to sell their shares to him on his terms (and ultimately carried through with that threat). (Id. ¶¶ 54, 67). He told creditors of AP that he would no longer do his job and communicate with them, threatening, of course, AP's credit and business (Id. ¶ 57). He ignored repeated demands that he stand down and then refused to attend the November 20, 2025 Special Meeting of Managers of Hyegate (the "Special Meeting") necessitated by his unresponsiveness and ignored the Resolutions

[2] The facts relevant to this application are set forth at length in Plaintiffs' Complaint and the January 28, 2026 Certifications of Saro and Nareg Hartounian, and are expressly incorporated by reference herein. Certain facts will be addressed directly below.

issued thereby wherein it was resolved that Defendant–given his destructive behavior and given the fact that he did not speak for the majority of Hyegate–cease purporting to act on behalf of Hyegate or its subsidiaries (i.e., AP). (Id. ¶¶ 64–65).

Even worse than all of this, in late November 2025, *after* the Special Meeting, Defendant engaged in lengthy email correspondence with APR, AP's primary customer and distributor, falsely insinuating that AP was in breach of some "exclusivity" agreement with APR; urging that customer to *sue* AP; accusing his partner Nareg of "criminality" and his partner Saro of being complicit in that "criminality"; and, perhaps worst of all, providing sensitive, confidential financial and business information of AP to that customer. (Id. ¶¶ 68–83).

These actions, escalating in scope and destructiveness right up to the filing of Plaintiffs' Complaint on December 9, 2025, are the reasons Plaintiffs sought–and the Court entered–a restraining order simply restraining Defendant from:

> (i) tak[ing] any unilateral action on purported behalf of Hyegate and/or the "Subsidiaries during the pendency of this application, (ii) publiciz[ing] or disseminat[ing] to third-parties any Confidential Information of Hyegate and/or the Subsidiaries; (iii) tak[ing] any action adverse to the business interests of Hyegate and/or the Subsidiaries; or (iv) tak[ing] 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.
>
> [OTSC with Temp. Restraints, BER-C-000287-25 (Jan. 20, 2026).]

In his thirty-page Certification, these issues are barely addressed by Defendant. He attempts to attack the validity of the Special Meeting, but that is a red herring. (See Certification of Van Krikorian ("Krikorian Cert.") ¶ 28). The Special Meeting was conducted because Defendant would not respond to Plaintiffs' repeated demands that he stop acting on behalf of (or adverse to) Hyegate and its subsidiaries. Whether or not the Special Meeting was valid does not

alter the need for the restraints and a preliminary injunction. However, the plain fact is that the Special Meeting was duly noticed, pursuant to the terms of the Operating Agreement and New York law. (See Compl. Ex. A § 6.4 ("Written, oral, or any other mode of notice of the time and place shall be given for special meetings sufficient time for the convenient assembly of the Managers."); Reply Certification of Adam Derman, Esq. ("Derman Reply Cert.") Ex. 1).

Moreover, absent from Defendant's recitation is *any* claim that he provided alternate dates for the Special Meeting–because he provided none. He was never going to attend.[3] He also attacks the Special Meeting because he purports to say that Saro and Nareg are "conflicted," but cannot elucidate what those "conflicts" are, other than the plain fact that they are in extreme disagreement with Defendant. (See Krikorian Cert. ¶ 37). And in his brief, he does not cite any legal basis for the contention that a "conflict" renders the corporate action invalid. In all events, the Resolutions are, of course, completely appropriate–they simply memorialize that Defendant does not have the authority to make unilateral decisions on behalf of Hyegate, DAP, or AP. (See Compl. Ex. W).

Even more outrageously, Defendant claims that he did not disseminate confidential information to APR in his email screeds of November 26, 2025, claiming that the information contained therein are publicly available in "Armenian mining reports," or can be obtained from "Customs," or "other sources." (Krikorian Cert. ¶ 34). This is, of course, blatantly false–and belied by the simple fact that Defendant does not provide any copies of or links to any of these "sources" where this information supposedly can be found. A mere glance at the document demonstrates that it is sensitive, confidential information of AP (and thus of Hyegate). (See Compl. Ex. DD). It contains, among other things, bank balances and loan status–information which of course can be

[3] Moreover, his allegation that Adam Derman "presided over and conducted" the special meeting is false. (Krikorian Cert. ¶ 28). While Mr. Derman provided all Managers with the Zoom link for the meeting, he did not attend it, far less "conduct" it. (See Certification of Saro Hartounian ("Saro Cert.") ¶ 6).

improperly leveraged by a customer, distributor, or competitor if disseminated to them (as Defendant did), but which *are not* disclosed to Customs, or in "mining reports," or in "other sources." (See Certification of Nareg Hartounian ("Nareg Cert.") ¶ 3). In the face of this, Defendant's other justifications why the information is not confidential: because the document was not marked with a caveat identifying it as confidential; because the information was limited in temporal scope and dated; because it was not disclosed to a "competitor" as defined in the operating agreement; and because it was disclosed "in response to false statements" allegedly made by Plaintiffs, verge on the comical.

And Defendant can scarcely address *why*, on earth, he invited APR to sue AP, or accuse Nareg of "criminality" to APR's principal, or to provide APR with Confidential Information. He claims he needed to request "APR's consent to AP sales into APR's exclusive territory and did so in [his] own name and not on behalf of the Companies." (See Krikorian Cert. ¶ 36). Of course, Defendant does not (because he cannot) explain the difference between what acting supposedly "in his own name" versus "on behalf of the Companies" means when he, as Member and Manager, has a fiduciary obligation to those Companies. Moreover, Defendant does not describe any efforts to resolve any perceived issue *vis* AP's agreements with APR *internally* with Saro or Nareg; nor does he explain how *inviting* APR to sue AP *possibly* serves AP's interests (even if he were right, and he is not),[4] or how accusing Nareg of criminality (and Saro of being complicit in it) to AP's

[4] As noted in the Complaint, and not reasonably contested by Defendant, APR in fact has no exclusivity rights *vis* AP with respect to Germany. AP and APR agreed to agree–at some future time–that exclusive territory "will be agreed to by the Parties in a separate agreement," an agreement which never happened. (Compl. ¶ 71, Ex. Z). Defendant cheekily posits that the Agreement attached as Exhibit Z to the Complaint is an "imperfect translation," and claims that the Armenian version should "prevail." (Krikorian Cert. ¶ 8). However, there is *no* executed Armenian version of this document, it was drafted by Defendant in English and executed by the parties in English. In all events, Defendant does not and cannot claim that any Armenian version would obviate the plain language indicating a mere agreement to agree, at a later date, as to exclusivity, or the plain fact that no such agreement was ever entered into. (See Nareg Cert. ¶ 6).

customer and distributor is remotely consistent with any duties to AP. In short, Defendant cannot deny reality: that his screeds to APR were merely part of a cynical maneuver, contemporaneous with his efforts to take over AP, to apply pressure to Saro and Nareg and devalue AP.

And of course, there is the fact, that, while accusing Nareg–*to a customer*–of "criminality" (and Saro of being complicit therein), the document the Defendant attaches to his Certification to support his allegation that Nareg was subject to criminal charges for illegal mining, including mining without a lease, is only an administrative conclusion by a regulatory agency *not* a criminal charging document, and in all events *does not even mention Nareg, not even once*. (See id. Ex. 2). And Defendant *himself* admits that his responsibilities *vis* AP were to "oversee mining and legal matters with the local General Director." (Id. ¶ 49). The charges involve *precisely* "mining" and "legal" matters (Defendant's stated area of responsibility) and they do not name Nareg. So why invoke Nareg's name with a blanket claim of "criminality" to AP's main customer? To tarnish Nareg (and by extension Saro); another component of Defendant's improper and destructive pressure tactics.

These actions by Defendant are *precisely* why Plaintiffs sought and obtained temporary restraints, and why a preliminary injunction is absolutely warranted here.

II. DEFENDANT'S ATTEMPTS AT DISTRACTION AND BLAME-SHIFTING

All of the above facts, as set forth more fully in the Complaint, demonstrate why the simple injunctive relief sought by Plaintiffs should be entered. Defendant scarcely addresses his actions (because they are indefensible) and rather devotes the vast majority of his certification to efforts at blame-shifting and/or invoking distractions. These allegations are a true red herring and make no sense in the context of his actions. Defendant does not connect them or use them to justify the conduct about which Plaintiffs complain. Moreover, the suggestion or contention that the situation

was so dire at AP directly conflicts with and contradicts Defendant's efforts to seize it from Saro and Nareg. Plaintiffs will not indulge in a line-by-line refutation of every single allegation thrown against the wall by Defendant, but will briefly address certain of his claims[5]:

- Defendant's Certification–facially–makes no sense. He claims, generally, that he was denied information concerning AP. (See Krikorian Cert. ¶¶ 18, 23, 47). However, he acknowledges, among other things, that he won an arbitration award on behalf of AP (id. ¶ 51), that he travelled to Armenia 3 to 5 times per year on Hyegate business, to the claimed tune of several millions of dollars (id. ¶ 52), and that he was responsible for AP's "mining and legal matters" (id. ¶ 49). And of course, he expounds at length about his self-proclaimed virtues as an attorney. Does he really expect the Court to believe that he was denied information all this time (including information about loans Harco made to Hyegate in order to keep AP operational)? If he was denied such information, why would he seek to acquire Hyegate from Saro and Nareg? It is nonsense, on its face–Defendant was always provided with all relevant information in keeping with his status as Manager and Member of Hyegate.

- In that regard, Defendant claims to have approved "some" but not all of the loans Harco made to Hyegate in order to keep AP afloat. (See id. ¶¶ 24–27). This is false too, and an attempt to create a conflict where there is none. Defendant–who never proffered a dime to Hyegate or the enterprise generally–was very well aware of all the expenditures Saro and Nareg made to the enterprise to keep it afloat (since he never contributed a dime) and never objected to any of them. (See Saro Cert. ¶ 4).

- Similarly, Defendant claims that he made some "contribution" to Hyegate by guaranteeing a loan. (See Krikorian Cert. ¶ 50). A guarantee is a far cry from a capital contribution, or even the outlay of a dime. Although Defendant overstates the loan he guarantees, the unassailable fact is that the loan has been and is being repaid–not by him, but by Harco (through AP). (See Saro Cert. ¶ 5).

- Defendant blithely dismisses the fake agreements (*i.e.*, forgeries) which he encouraged AP–at its detriment–to honor as "mistake[s.]" (Krikorian Cert. ¶¶ 30, 32). What he does not and cannot deny is that Nareg did not himself sign the document attached as Exhibit E to the Complaint. Nareg's signature on that document was cut and pasted from some other document, making the document allegedly bearing Nareg's signature a forgery. And that forged document purported to create an enforceable agreement obligating AP to purchase $246,051 worth of equipment from APR, based upon an underlying agreement that was never

[5] The following is submitted without prejudice. Plaintiffs expressly reserve the right to rebut all unfounded and false accusations contained within Defendant's Certification, at the appropriate time, and in the appropriate forum. The within is solely to demonstrate the falsity and irrelevance of Defendant's assertions and the strong necessity for the very simple injunctive relief Plaintiffs seek here and now.

finalized. (See Compl. ¶ 39). And all of this is to the detriment of AP, and to the benefit of APR–the entity with which, as set forth above, he later connived and urged to sue AP in his efforts to take over the company.

- Defendant's false allegations of "massive tax evasion" by Nareg are demonstrative. (Krikorian Cert. ¶¶ 13, 46). The facts are too complicated (and too irrelevant) to recount here. But, simply put: Nareg did not commit "tax evasion." The false and pretextual charges were brought against him by adverse persons and entities corruptly seeking to take possession of certain properties and assets owned by Saro and Nareg in Armenia. Nareg was unjustly detained for *four days,* as a pressure tactic to seize the assets, and then released. The charges were ultimately dropped. The repeated invocation of these same stale and false claims by Defendant in his Certification–in a case that has nothing to do with them–is nothing more than attempted character assassination and actionable as defamation. (Nareg Cert. ¶ 4).

- Defendant attempts to besmirch Plaintiffs by claiming there was some "phantom payment" to Nareg in connection with his long tenure as General Manager of AP. (Krikorian Cert. ¶ 9). **This is false and Defendant knows it.** Nareg served as General Manager of AP from 2019 to 2024. For the majority of his tenure, Nareg took no salary. For the brief period he was paid, he contributed those funds back into the business for cash flow purposes. In connection with his efforts to purchase Hyegate in 2025, Defendant demanded that Saro provide a list of all potential liabilities of AP. Saro provided the list–which included the liability to Nareg for his, thus far *unpaid*, service to AP as General Manager. And indeed, Saro told Defendant that this liability would be waived by Nareg should agreeable sale terms be reached. (See Saro Cert. ¶ 3). Defendant knows all of this. It is beyond *chutzpah* for Defendant to claim that this entry is somehow representative of a "phantom payment[,]" when he demanded an accounting of all potential liabilities of the company, including those incurred by Nareg for his services *which are unpaid*. Indeed, Defendant was well aware that Nareg was uncompensated and "agree[d]" "100%" that Nareg should be drawing salary from AP for his efforts as GM. (Id.). But it is telling of one thing, nevertheless–Saro provided this list of liabilities as part of the sale discussions, and it contains, plainly, confidential information. **And Defendant filed it publicly, demonstrating all of the outstanding liabilities of AP.**[6] He plainly has no regard for AP, its parent Hyegate, their confidentiality, the going-forward condition of the business, or, apparently, the orders of this Court. He cares only for himself.[7]

[6] Plaintiffs demand that this document be stricken and re-filed under seal.

[7] The Court will note that Defendant liberally cloaks himself with the application of "whistleblower." (See Def's Opp'n Br. 4, 7). Put simply, his so-called "whistleblowing" is bogus. However, more importantly, it is a total red herring. As can be seen *none* of the bases for Plaintiffs' application have *anything* to do with Defendant's (baseless) complaints to Armenian authorities. Those issues will be addressed in litigation/arbitration, but this injunction can be issued without reference to any of them.

In sum, the allegations of bad conduct by Saro and Nareg are false and easily refutable. More importantly, they have no connection to, and provide no justification for, Defendant's improper conduct.

LEGAL ARGUMENT

I. PLAINTIFFS ARE ENTITLED TO INJUNCTIVE RELIEF

As set forth in Plaintiffs' Complaint, in their moving papers, at oral argument, and as set forth further below, Plaintiffs are entitled to the injunctive relief sought because (i) there exists a reasonable probability of ultimate success on the merits of Plaintiffs' claims, (ii) Plaintiffs have no adequate remedy at law and will sustain immediate and irreparable harm if an injunction is not issued, and (iii) the balance of the equities greatly favors granting injunctive relief. See, e.g., Crowe v. DeGioia, 90 N.J. 126, 132–34 (1982).

Waste Mgmt. of N.J., Inc. v. Morris Cnty. Mun. Utils. Auth., 433 N.J. Super. 445 (App. Div. 2013) demonstrates how Courts are to adjudicate requests for injunctions to preserve the status quo. Rather than rigidly apply the Crowe factors, "a court may take a less rigid view of the Crowe factors and the general rule that *all* factors favor injunctive relief when the interlocutory injunction is merely designed to preserve the status quo." Id. at 453 (emphasis in original). Rather, "[t]he power to impose restraints pending the disposition of a claim on its merits is flexible; it should be exercised whenever necessary to subserve the ends of justice," and "justice is not served if the subject-matter of the litigation is destroyed or substantially impaired during the pendency of the suit." Id. Thus, this less rigid approach, for example, permits injunctive relief preserving the status quo even if the claim appears doubtful when a balancing of the relative hardships substantially favors the movant, or the irreparable injury to be suffered by the movant in the absence of the injunction would be imminent and grave, or the subject matter of the suit would be impaired or destroyed. Id.

Here, the Court has already determined that all of the Crowe factors are satisfied. Indeed, the Court expressly found that Plaintiffs' "application is supported and re-supported and backed up and corroborated by actions that absolutely support activity that it goes in complete contrast to Mr. Krikorian's obligations to his fellow members under [Hyegate's] operating agreement[,]" and, as a result, it was "clearly convinced that there is irreparable harm if [the Court] do[es]'t maintain the status quo." (See Derman Reply Cert. Ex. 2 at 56:2–5, 57:15–16). Regarding likelihood of success, the Court found the facts presented by Plaintiffs to be "clear and convincing" and indicative that "[P]laintiff[s] ha[ve] a high likelihood of success on the merits. (Id. at 58:10–14). Finally, the Court identified "the balance of equities" as "the most important factor[,]" concluding that the equities favored injunctive relief because, based on Plaintiffs' "compelling application[,]" it was "clearly convinced that [Defendant's] actions may be motivated by an attempt to devalue [Hyegate], much as [Plaintiffs] described in [their] argument." (Id. at 59:16–20). As set forth above, *nothing* submitted by Defendant serves to refute any of these findings.

A. Plaintiffs Will Suffer Irreparable Harm

Defendant–in his continued blithe disregard for Hyegate and the entire enterprise–argues that the harm he caused the enterprise is "not enough" to warrant injunctive relief. In other words, that the Court should allow him to continue down his path of destruction until he reaches his objective: devaluing AP (and thus Hyegate) until Saro and Nareg have no choice but to acquiesce to his unreasonable demands, or watch the enterprise collapse. This position is unfounded in both equity and law.

Indeed, the notion that a litigant who may ultimately be entitled only to damages is therefore barred from equitable relief because he has a "remedy at law" is an oversimplification. In re Est. of Napoleon, 2010 WL 2696695, at *3 (N.J. Super. Ct. App. Div. July 7, 2010). The proper inquiry is not "whether a remedy at law exists, but whether the litigant has 'an **adequate**

remedy at law.'" Id. (emphasis in original) . A remedy at law is inadequate where "monetary damages are difficult to quantify **or is likely not to be available at the end of the day.**" Id. (emphasis added). In such circumstances, courts may grant equitable relief, including injunctions or specific performance. See Fleischer v. James Drug Stores, 1 N.J. 138, 146–47 (1948); Cmty. Hosp. Grp., Inc. v. Blume Goldfaden Berkowitz Donnelly Fried & Forte, P.C., 384 N.J. Super. 251, 255 (App. Div. 2006) ("destroying a complainant's business, custom and profits do an irreparable injury and authorize the issue of a preliminary injunction").

Here, as the Court has already recognized, Plaintiffs are not required to sit idly by while Hyegate's business is destroyed. Defendant's malicious conduct is clear and ongoing, and the Court correctly found that restraints are warranted *now* to stop the damage and preserve the status quo. Moreover, as set forth in Plaintiffs' moving papers, Section 7.5 of the Hyegate Operating Agreement requires all Members to "conceal and protect [confidential information] from any and all other persons" and prohibits any Member from "us[ing] or impart[ing] any such knowledge acquired by the Member as a Member to anyone whatsoever during the term of the Company" and acknowledges that divulgence of the same constitutes "*irreparable injury*" to Hyegate, entitling Hyegate "in addition to any other rights and remedies it may have, at law or in equity, *to a temporary restraining order and an injunction* (without bond or proof of actual damages) *enjoining and restraining any Member from doing or continuing to do any such act*[.]" (See Compl. Ex. A § 7.5).

"Confidential Information," in turn, is defined to include information that, if made public or placed in the hands of a competitor, would "seriously jeopardize[]" the Hyegate's business. (Id.). Hyegate owns nothing but DAP; DAP owns nothing but AP. Defendant willfully transmitted internal information–including AP's banking and loan status–to AP's primary customer and

distributor. It is difficult to imagine a clearer example of information that, if publicly disseminated or shared with a counterparty, would "seriously jeopardize" Hyegate's business. Defendant cannot seriously contend otherwise.

B. Plaintiffs Have a Reasonable Probability of Success on the Merits

Again, given the grave harm threatening Hyegate, and Defendant's continued and unquestionably destructive behavior, the Court may take a "less rigid view" of the Crowe factors, including likelihood of success. Waste Mgmt. of N.J., Inc., 433 N.J. Super. at 453. In any event, Plaintiffs have amply demonstrated a likelihood of success on the merits.

1. Breach of Fiduciary Duty

Defendant is both a Manager and Member of Hyegate and its subsidiaries. In those capacities, he owes Plaintiffs duties of loyalty and care pursuant to the New York Limited Liability Company Law and common law. See N.Y. Ltd. Liab. Co. Law § 409(a); McGuire Child., LLC v. Huntress, 24 Misc. 3d 1202 (N.Y. Sup. Ct. 2009). To establish a breach of fiduciary duty, a plaintiff must show: "(1) the existence of a fiduciary relationship, (2) misconduct by the defendant, and (3) damages directly caused by the defendant's misconduct." Weinberg v. Picker, 99 N.Y.S.3d 421, 426 (N.Y. App. Div. 2019). Plaintiffs' Complaint plainly satisfies each of these elements.

The thin reed Defendant hangs his hat–that the Confidential Information he disseminated was not "confidential," or that it belonged to AP rather than Hyegate–is spurious. The confidential nature of that information is evident on its face. And it cannot be ignored that Hyegate exists for the *sole purpose* of owning and managing AP. Defendant himself created this ownership structure; he cannot now weaponize it as a shield for his misconduct. His attack on AP was, by design and effect, an attack on Hyegate, which therefore has every right to assert claims for his clear breach of fiduciary duty.

The remainder of Defendant's "defenses" are equally bogus. He goes on about the purported "criminal" investigation of Nareg–but as noted, there is no criminal investigation of Nareg and the document Defendant cites *does not mention Nareg, at all*. Defendant himself also admits that his own responsibilities included oversight of AP's "legal" and "mining" matters. (See Krikorian Cert. ¶ 49). The charge he cites concerns precisely those matters. His attempt to shift blame onto Nareg is inexplicable and irrelevant. There is no connection between these allegations and his conduct. In all events–*it does not absolve him of his responsibilities and fiduciary obligations*–starting with the most basic one: do not disclose confidential information to customers.[8]

2. Breach of Contract

Hyegate's Operating Agreement expressly requires all Members to maintain the confidentiality of Hyegate's confidential information. (See Compl. ¶ 29). As discussed above, Section 7.5 of the Operating Agreement provides that confidential information–including, but not limited to, "customer lists, financial statements, confidential information belonging to licensees, licensors and contracting parties" "which if . . . made publicly known, the Company's business would be jeopardized" must be held "inviolate and confidential." (Id.). Each Member further agreed to "conceal and protect" such information and to "not use or impart any such knowledge . . . to anyone whatsoever[.]" (Id.). The Operating Agreement further explicitly recognizes that any breach of these confidentiality obligations "will cause irreparable injury" to Hyegate and entitles Hyegate–without bond or proof of actual damages–to "a temporary restraining order and an injunction" restraining any Member from committing or continuing such

[8] To say nothing of inviting that customer to *sue* the entity to which he has a fiduciary duty, or to defame the other principals of that entity with allegations of "criminality."

violations. (Id.). Defendant cannot dispute this. His only argument is that the sensitive financial information he sent to AP's primary customer is somehow not confidential. That is, of course, absurd.

3. Defamation/Business Defamation

Defendant's opposition does not meaningfully refute Plaintiffs' showing of a strong likelihood of success on their defamation and business-defamation claims. Rather than engage with the specific allegations pled in the Complaint, Defendant simply asserts–without evidence–that every statement he made was "true" and therefore not defamatory. (Def's Opp'n Br. 7). That assertion is unsupported by the record and legally insufficient. The Complaint identifies verbatim statements in which Defendant accused Saro and Nareg of "criminality," "covering up illegal matters," and engaging in conduct that would expose AP to bankruptcy. (Compl. ¶¶ 62, 68, 78–81). These are not expressions of opinion; they are factual allegations capable of being proven true or false, and accusations of criminal conduct constitute defamation per se. See McLaughlin v. Rosaino, Bailets & Talamo, Inc., 331 N.J. Super. 303, 313–14 (App. Div. 2000); Konig v. CSC Holdings, LLC, 977 N.Y.S.2d 756, 758 (N.Y. App. Div. 2013). Defendant offers no competent evidence supporting the truth of these statements, and the Complaint alleges facts demonstrating their falsity–including that no criminal investigation implicates Saro or Nareg. (See Compl. ¶¶ 50, 62, 78.)

Defendant's argument that Plaintiffs failed to plead the statements with sufficient particularity is equally meritless. The Complaint sets forth the precise words used, the audiences to whom they were published–including AP's primary customer and members of the Armenian community–and the context in which they were made. This satisfies the pleading standard set forth under Dillon–the case upon which Defendant primarily relies–which requires identification of the

"particular words complained of" and the "time, place and manner" of publication. Dillon v. City of N.Y., 704 N.Y.S.2d 1, 5 (N.Y. App. Div. 1999). Plaintiffs have done exactly that.

Defendant's reliance on qualified privilege also fails. First, that would only apply to his so-called "whistleblowing"–not to his statements to APR or others–and while Plaintiffs reserve all rights with respect to the unfounded allegations Defendant has made to Armenian authorities, they do not form the basis for their application for injunctive relief. A qualified privilege applies only where the speaker acts in good faith and communicates with individuals who have a corresponding duty or interest in receiving the information. See Stega v. N.Y. Downtown Hosp., 31 N.Y.3d 661, 669–70 (N.Y. 2018). The qualified privilege is lost where, as here, the speaker acts with malice or reckless disregard for the truth. See id.

Notably, Defendant does not meaningfully address the business-defamation allegations at all. He offers no response to the claims that he falsely told customers that AP could not maintain product quality, lacked proper machinery, or was engaged in illegal conduct–statements that go directly to AP's commercial reputation and customer relationships. Under Bank v. Lee, 481 N.J. Super. 412, 434 (App. Div. 2025), such statements constitute actionable business defamation when false and harmful to business interests. Defendant's silence on these points amounts to a concession.

4. Dissociation/Declaratory Judgment

Defendant's opposition does not meaningfully undermine Plaintiffs' likelihood of success on their declaratory-judgment and dissociation claims. As an initial matter, Defendant misstates the relief presently sought. Plaintiffs are not asking the Court to finally adjudicate dissociation or to enter a merits-based declaration removing Defendant from Hyegate at this stage. The preliminary-injunction application seeks only to preserve the status quo by maintaining the effect

of the Resolutions until the arbitrators and/or the Court resolve the parties' competing contractual claims after full merits submissions.

In all events, Defendant's arguments fall short. His assertion that the Resolutions are "invalid" because he did not attend the Special Meeting or because he requested additional documents is unsupported by the Operating Agreement or New York law. (Def's Opp'n Br. 10). The Complaint alleges that the meeting was convened in accordance with Sections 6.3 and 6.4 of the Operating Agreement, and Defendant identifies no provision requiring unanimous attendance or granting him the ability to nullify a vote simply by refusing to participate. Nor does he cite any authority suggesting that purported "conflicts of interest" void a vote taken pursuant to the Operating Agreement's express procedures. (Def's Opp'n Br. 9). To the contrary, New York's Limited Liability Company Law confirms that the Operating Agreement governs the "rights, powers, preferences, limitations or responsibilities of its members [and] managers." N.Y. Ltd. Liab. Co. Law § 417(a). The Resolutions were adopted pursuant to those procedures, and Defendant's unilateral refusal to comply with them does not render them void.

Defendant's reliance on Man Choi Chiu v. Chiu, 896 N.Y.S.2d 131, 132 (N.Y. App. Div. 2010), is similarly unavailing. (See Def's Opp'n Br. 9–10). Chiu holds only that New York's LLC statute does not provide a statutory mechanism for judicial expulsion; it does not prohibit courts from enforcing contractual expulsion rights contained in an operating agreement. Numerous New York decisions confirm that where an operating agreement includes expulsion language–as Hyegate's does in § 9.1(c)–courts enforce that contractual authority. See, e.g., Garcia v. Garcia, 133 N.Y.S.3d 631 (N.Y. App. Div. 2020); Ross v. Nelson, 861 N.Y.S.2d 670 (N.Y. App. Div. 2008). And where, as here, the operating agreement authorizes expulsion but does not specify procedures, courts look to the agreement's general voting provisions to determine the proper

mechanism. See Garcia v. Garcia, 941 N.Y.S.2d 537 (N.Y. Sup. Ct. 2011). Section 6.8 of the Operating Agreement provides for majority-interest decision-making, and Saro and Nareg indisputably hold that majority interest.

As set forth in the Complaint, the Resolutions were adopted in accordance with the Operating Agreement's notice and voting provisions, and Defendant's refusal to attend the meeting or comply with the Resolutions does not invalidate them. Defendant's opposition offers no contractual language or legal precedent to the contrary.

5. Fraud/Conspiracy to Commit Fraud

Defendant's opposition does little to blunt the force of Plaintiffs' fraud-based claims. (See Def's Opp'n Br. 8–9). His arguments consist largely of blanket denials and the assertion that his certification "refute[s]" the allegations. (Id.). Such arguments are not a meaningful challenge to the well-pled facts in the Complaint. Plaintiffs allege that Defendant knowingly participated in efforts to enforce a forged Equipment Sale Agreement, directed AP's CEO to execute another forged document, and attempted to saddle AP with a $325,000 obligation rooted in those forged documents. (Compl. ¶¶ 39–45). These allegations, taken as true, constitute material misrepresentations made with knowledge of falsity, intended to induce reliance, and resulting in concrete harm–easily satisfying the elements of common-law fraud under both New Jersey and New York law. See Allstate N.J. Ins. Co. v. Lajara, 222 N.J. 129, 147 (2015); Eurycleia Partners, LP v. Seward & Kissel, LLP, 12 N.Y.3d 553, 559 (N.Y. 2009).

Defendant's argument that Plaintiffs cannot pursue fraud because AP "relied" on the misrepresentations misses the mark. (Def's Opp'n Br. 9). Fraud does not require that the plaintiff be the direct recipient of the misrepresentation; it simply requires that the plaintiff suffer damages proximately caused by the fraudulent scheme. Plaintiffs allege that Defendant's conduct exposed AP–and therefore Hyegate and its members–to a fraudulent $325,000 liability and other business

harm. Nor does Defendant's self-serving Certification resolve anything. A defendant cannot defeat a fraud claim by simply asserting that he "never encouraged the use of any forged document." (Krikorian Cert. ¶¶ 29–33). The Complaint sets out detailed allegations, including the nature of the forged documents, Defendant's role in promoting them, and the resulting financial exposure.

Defendant's treatment of the civil-conspiracy claim is even thinner. Plaintiffs allege that Defendant acted in concert with APR and Blagov to enforce forged documents, instructed AP's CEO to execute another forged agreement, and took overt steps to advance the fraudulent scheme. (Compl. ¶ 40.) These allegations alone satisfy the elements of civil conspiracy: an agreement to commit an unlawful act and overt acts in furtherance of that agreement resulting in harm. See Banco Popular N. Am. v. Gandi, 184 N.J. 161, 177–78 (2005). Defendant offers no substantive response to these allegations, effectively conceding the point.

C. The Balance of Equities Favors Granting Injunctive Relief

Defendant's opposition does not alter the straightforward balance of hardships presented here. The temporary restraints now in place do not disrupt the status quo–they preserve it. The TRO simply prevents Defendant from engaging in conduct the Operating Agreement already prohibits: acting unilaterally on behalf of the Enterprise, disseminating confidential information, and taking actions adverse to Hyegate. Those restrictions maintain the operational equilibrium that existed before Defendant began the conduct that triggered this litigation. Removing the restraints would expose Plaintiffs to the same destabilizing actions that necessitated court intervention in the first place. Equity does not require Plaintiffs to endure renewed harm while the parties proceed to arbitration. See Crowe, 90 N.J. at 132–34 (discussing that equitable relief is appropriate to prevent ongoing harm and preserve the status quo).

Defendant's claimed hardship–damage to his "good name and reputation" from being restrained from harming the Enterprise–is not a cognizable injury under Crowe. (Def's Opp'n Br.

12). A party cannot manufacture hardship by insisting on the right to continue conduct that violates contractual obligations and threatens the business. Plaintiffs seek nothing more than to ensure that a minority Member/Manager who contributed no capital complies with the Operating Agreement and the Resolutions pending arbitration. Defendant, by contrast, seeks permission to resume the very conduct the Court has already determined should be restrained on an interim basis. The relative burdens are not comparable. See Subcarrier Commc'ns, Inc. v. Day, 299 N.J. Super. 634, 639–40 (App. Div. 1997) (equities favor injunction where defendant seeks to continue conduct contrary to contractual obligations). Defendant's argument that the injunction would somehow harm Hyegate because Saro and Nareg "cannot be left to their own devices" is both unsupported and irrelevant to the equitable analysis. (Def's Opp'n Br. 12). The relief sought merely prevents Defendant from taking unauthorized actions opposed by the majority interest holders. Defendant's disagreement with the majority's business judgment does not constitute hardship under Crowe. See Waste Mgmt. of N.J., Inc., 433 N.J. Super. at 453.

Nor does Defendant's assertion that "material facts are controverted" preclude injunctive relief. Crowe does not bar preliminary restraints whenever parties dispute facts; it bars restraints where the factual disputes make it impossible to determine whether interim relief is necessary. Crowe, 90 N.J. at 133. The Court has already found that temporary restraints were warranted based on the record presented, and as noted Defendant's submission does nothing to change that analysis (it barely addresses the relevant facts). See Coskey's Television & Radio Sales & Serv., Inc. v. Foti, 253 N.J. Super. 626, 638–39 (App. Div. 1992) (injunction appropriate where defendant's conduct threatens business operations).

Plaintiffs seek only to prevent further disruption to Hyegate and to preserve the status quo until the arbitrators resolve the parties' underlying disputes. In contrast, Defendant seeks to lift

restraints so he may resume conduct that has already caused significant harm. The equities therefore weigh decisively in Plaintiffs' favor.

CONCLUSION

For the foregoing reasons, for those set forth in Plaintiffs' moving papers, and at oral argument, Plaintiffs respectfully request that the Court continue the TRO as a Preliminary Injunction pending arbitration.

Dated: January 28, 2026

Respectfully submitted,

CHIESA SHAHINIAN & GIANTOMASI PC

By: _____
ADAM K. DERMAN

Adam K. Derman, Esq. (007131995)
James Van Splinter, Esq. (019382005)
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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-00287-25 Civil Action **CERTIFICATION OF ADAM K. DERMAN, ESQ. IN FURTHER SUPPORT OF PLAINTIFFS' APPLICATION FOR A PRELIMINARY INJUNCTION**

ADAM K. DERMAN, of full age, hereby certifies as follows:

1. I am an attorney-at-law admitted in the State of New Jersey and a member of the law firm Chiesa Shahinian & Giantomasi PC, attorneys for Plaintiffs Saro Hartounian ("Saro"), Nareg Hartounian ("Nareg"), and Hyegate, LLC (collectively, "Plaintiffs") in the above-captioned matter. As such, I am fully familiar with the facts and circumstances set forth herein.

2. I respectfully submit this Certification in further support of Plaintiffs' application for injunctive relief.

3. Attached hereto as **Exhibit 1** is a true and accurate copy of an email dated November 19, 2025 among myself, Saro, Nareg, and Defendant regarding notice provisions in connection the Special Meeting.

4. Attached hereto as **Exhibit 2** is a true and accurate copy of the transcript of the January 9, 2026 oral argument concerning Plaintiffs' application for an order to show cause with temporary restraints in this matter.

5. Pursuant to Rule 1:36-3 of the New Jersey Court Rules, attached hereto as **Exhibit 3** is a true and accurate copy of the unpublished opinion In re Est. of Napoleon, No. A-1087-09T2, 2010 WL 2696695 (N.J. Super. Ct. App. Div. July 7, 2010), which is cited in Plaintiffs' reply brief in further support of Plaintiffs' application for injunctive relief.

Dated: January 28, 2026

ADAM K. DERMAN

EXHIBIT 1

From: Derman, Adam
To: Van Krikorian
Cc: Saro Hartounian (saro@harcoweb.com); Nareg Hartounian
Subject: RE: Notice of Special Meeting
Date: Wednesday, November 19, 2025 3:52:18 PM
Attachments: image001.png

Van – As you know, Saro and Nareg repeatedly requested that you confirm that you would not take any unilateral action on behalf of the entities. The fact that you failed to respond to this simple and basic request was alarming and, combined with recent actions, significantly heightened their concerns regarding your ability and willingness to meet your fiduciary duties. As a result, they were forced to address this through a notice of special meeting. As for the notice of the meeting, the provision you cite to and your recitation of the law is incorrect as the special meeting is a meeting of the managers, not the members. The applicable provision provides that "*Written, oral, or any other mode of notice of the time and place shall be given for special meetings [with] sufficient time for the convenient assembly of the Managers*". Since the special meeting is by zoom/dial in, there is no reason why the notice would not be sufficient. However, if you have an actual conflict at that time, Saro and Nareg are prepared to move the meeting to later in the day tomorrow or Friday as an accommodation.

The rest of your allegations are denied and will be addressed at the appropriate time.

Adam

ADAM K. DERMAN
Chair, Litigation
Chiesa Shahinian & Giantomasi PC

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105 Eisenhower Parkway | Roseland, NJ 07068
11 Times Square, 34th Floor | New York, NY 10036

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From: Van Krikorian <VKrikorian@outlook.com>
Sent: Wednesday, November 19, 2025 2:33 PM
To: Derman, Adam <ADerman@csglaw.com>
Cc: Saro Hartounian (saro@harcoweb.com) <saro@harcoweb.com>; Nareg Hartounian <nareg@harcoweb.com>
Subject: Re: Notice of Special Meeting

* External Message *

Messrs. Derman and Hartounian:

Your purported notice of meeting does not comply with legal requirements and is

void.

First, I am not aware of, nor have you provided, any legal basis for a combined meeting of managers and members of two LLCs at the same time as the notice provides.

Second, governing New York law clearly provides "Except as provided in the operating agreement, a copy of the notice of any meeting shall be given, personally or by first class mail, not less than ten or more than sixty days before the date of the meeting, provided, however, that a copy of such notice may be given by third class mail not less than twenty-four nor more than sixty days before the date of the meeting, to each member entitled to vote at such meeting." https://law.justia.com/codes/new-york/llc/article-4/405/. The relevant terms of both Companies' operating agreement provisions do not provide an exception to this rule but do provide that the meeting date be convenient to all. Your purported notice of meeting is not convenient; thus, no exception applies.

Third, in addition to my standing request for current, accurate financials and relevant accounting, clear conflicts of interest bar Saro and Nareg from taking additional self-interested actions on behalf of either company or the Armenian subsidiary without my informed consent, which is expressly not granted. As you are all aware, Nareg is the subject of a detailed criminal charges involving illegal mining and other acts which are criminal by any standard. The evidence we have seen internally and from the government seem to squarely substantiate those charges and additional violations which have not been charged but about which he is aware. He was and is responsible for significant, knowing, illegal mining; records shared with us internally confirm his liability related to criminal matters. In addition, and without limitation, he borrowed and spent more than significant funds without authorization or disclosure, exposing the companies to major losses which are now being attempted to be covered up. It also appears that he authorized sales of over $500,000 to parties other than the exclusive distributor which have exposed the companies to additional bankruptcy risk. He also oversaw environmental and safety violations as well as staff corruption (specifically the payment and acceptance of bribes and kickbacks), according to third party reports.

Based solely on the Government's current written charges against him, Nareg is disqualified from any active role in the companies until or unless the charges are somehow resolved in his favor, which is doubtful considering our internal record and the evidence. The companies' own records confirm other reasons, separate from accusations which have not been investigated. Your attempt to proceed with this meeting or other actions relying on his vote or participation is void.

Saro suffers from similar disqualifying factors based on his relationship, complicity, and protection of his brother Nareg. It also appears that there are additional self-dealing violations, confirmed by the failure to meet legitimate pending and historic requests by me for accurate financials and mining reports. It appears that if not in 2025 than in the recent years, Saro/Harco or another entity controlled by Saro and/or Nareg received funds from the Armenian company instead of paying third party creditors and engaged in other self-dealing transactions. The litany of additional specific acts is not being set out here. But, as a recent example, attached as Exhibit 1 is a fraudulent Aragats Perlite financial statement of current payables transmitted via email by Saro dated October 10, 2025, attempting to falsely increase the payable to his brother Nareg by approximately $240,000. When confronted with the gross inconsistency with tax returns and other records to which I had access, Saro admitted the fraud as an attempt to get Nareg more money, *i.e.* not as an honest or other type of mistake. This example alone disqualifies him and Nareg from actions without my consent related to the companies.

Accordingly, a full accounting of all companies is demanded again including access by an expert of my choosing to all relevant records. No transactions without my prior written consent were or are authorized. I will not be associated with the pattern of illegal activity.

If you nevertheless proceed with the meeting and/or take any action without my consent, they will be void. If you believe my reading of the law or LLC operating agreements is incorrect, please let me know and I will address your position.

As you understand, this notice is without limitation of other claims and reserves all rights and remedies.

Van Krikorian

From: Derman, Adam <ADerman@csglaw.com>
Sent: Tuesday, November 18, 2025 5:12 PM
To: Van Z. Krikorian <vkrikorian@globalgoldcorp.com>; VKrikorian@outlook.com <VKrikorian@outlook.com>
Cc: Saro Hartounian (saro@harcoweb.com) <saro@harcoweb.com>; Nareg Hartounian <nareg@harcoweb.com>
Subject: Notice of Special Meeting

Van – The attached is being sent on behalf of Saro and Nareg. Adam

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EXHIBIT 2

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION, GENERAL EQUITY PART
BERGEN COUNTY
DOCKET NO. BER-C-000287-25
APP. DIV. NO. _____

SARO HARTOUNIAN, NAREG HARTOUNIAN and HYEGATE, LLC, Plaintiffs, v. VAN Z. KRIKORIAN, Defendant.	TRANSCRIPT OF MOTION

Place: Bergen County Justice Center
(Heard via Zoom)

Date: January 9, 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: Tammy DeRisi, AD/T 518

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Operator - Maria Marcano

APPEARANCES (CONT'D):

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

I N D E X

**Note: Due to the remote nature of the proceeding, the audio quality was poor, leading to instances of (indiscernible) throughout the transcript.

(Proceeding commenced at 10:22:30 a.m.)
THE COURT: Let's go on the record. And Maria, just let me know when we're on.
COURT CLERK: Judge, we're on the record.
THE COURT: Okay. Again, good morning, everyone. We're on the record in the matter of Hartounian, et al. v. Krikorian. It's Chancery Docket 287-25. May I have appearances, please?
MR. DERMAN: Good morning, Your Honor. Adam Derman from the law firm of CSG, on behalf of the plaintiffs. And with me are my colleagues, James Van Splinter and Renee Shafran.
MR. COUSIN: Your Honor, for the defendant, my name is Brian Cousin, from the law firm of Fox Rothschild. I have with me my colleague Casey Pearlman and our client, Van Krikorian is also on the line.
THE COURT: Good morning to everybody. All right. Well, we have a couple of things to get to. Let's handle the order to show cause filed by the plaintiff with regard to the injunctive relief that is being sought.
MR. COUSIN: Your Honor? If I may, we had received communications from your clerk indicating very clearly that our application for compelling arbitration would be heard first. Is that not the case today?

MR. DERMAN: Your Honor, I have no problem if he wants to argue that first, then I'll respond, if that's helpful.
THE COURT: I've had that -- the communication that you received is accurate. Okay? That is accurate. Having had the opportunity to review the papers, it doesn't mean that injunctive relief can't be granted pending the arbitration action. So that's the reason why -- I want to hear the arguments as to why we need injunctive relief.
MR. COUSIN: Understood.
THE COURT: And whether or not we're going to continue in a litigation posture here in the Chancery Division, or are we going to compel arbitration?
MR. COUSIN: Yes, Your Honor.
THE COURT: The fact that there's a motion to compel arbitration doesn't mean that the injunctive relief is being sought is -- it's not a valid request.
MR. COUSIN: Understood, Your Honor. We'll certainly proceed the way Your Honor --
THE COURT: The answer -- the answer to your question is yes, you were told that we would handle arbitration first. So whatever way you want to do it. If you want to handle the arbitration, since Mr. Derman says it's not a problem, I'll hear from you, counsel.

MR. COUSIN: Okay, Your Honor. Thank you. May it please the Court, Your Honor, first of all I wanted to just to point out that it's our very strong contention that the only reason that this case was filed before Your Honor through a complaint was to embarrass and harass Mr. Krikorian, and that given the very clear and extremely broad arbitration provisions included in Exhibit A and in fact Exhibit B, which are the two operating agreements of two companies that the parties were all involved with, those broad arbitration agreements were so clear, in fact, on the very last page of Exhibit A is where Section 10.4 of the Hyegate operating agreement sets forth the broad arbitration clause. So the very same page where all the individuals signed their name to be bound by the operating agreement has their signatures on the same exact page where 10.4, Section 10.4 sets forth this broad arbitration agreement.

So for counsel or for the plaintiffs in any way, shape or form to suggest that they were not aware of this broad arbitration language, which compelled them to seek arbitration of any party's disputes before the American Arbitration Association under the commercial rules in New York City is ridiculous.

So we know because of that, and we assume

that these people read the contracts that they sign, and that the lawyer who represents them understands the contracts that it put before the Court, that's why we've come to the conclusion to be, based on the totality of the circumstances, we cannot see any possible basis for having filed a complaint in this court. So --

THE COURT: Well, let me ask you a question, Mr. Cousin.

MR. COUSIN: Yes, Your Honor.

THE COURT: You're very familiar with the rules of court, correct?

MR. COUSIN: Of course.

THE COURT: Can you get an order to show cause heard before the Chancery Court without a verified complaint? It's a yes or no question.

MR. COUSIN: Yeah. I know, Your Honor. That's why I'm thinking about it, because I want to make sure I give you the right answer. I think --

THE COURT: Well, the answer is you can't.

MR. COUSIN: Yeah. And I agree with that.

THE COURT: Okay. So you have to file a verified complaint in order to get injunctive relief.

MR. COUSIN: Yes, of course.

THE COURT: And does an arbitration provision

mean that there is no relief that could be sought by a court in an emergent application regarding business transactions to preserve the status quo while we go to arbitration? How many cases have you been involved in, Mr. Cousin, where that is the very relief that you sought as a plaintiff? I'm not asking you to -- I'm just --

MR. COUSIN: Yeah. That's --

THE COURT: -- so let's look at this procedurally. And now Mr. Derman is listening to me. So if he turns around and says to me what you are claiming, which is, oh, well, Judge, we -- there's no arbitration, well then I'm going to have an issue with Mr. Derman.

MR. COUSIN: Right. Well, I mean, he signed the certification at the time he filed that complaint saying that there was no arbitral matter, that there was no arbitration. That's right at the end of the complaint, where the -- where the attorneys put their certification regarding that issue. And that's what he certified to. And we have been waiting sort of daily to see whether or not the plaintiffs would file a Triple A arbitration to change that. But that has not occurred to our knowledge. They have not put in any evidence whatsoever that they've either filed a Triple

A arbitration or intend to file a Triple A arbitration, even after they got our papers, and even after I sent a letter, a potential sanctions motion letter to alert the other side to the fact that they were wrong and they should withdraw their motion without an arbitration.

But no, we have not heard anything back from opposing counsel saying okay, we're going to hear that, or okay, let's get an adjournment of the hearing date so we can cure that by filing an arbitration. We haven't heard any of that. So here we are today, and we're -- you know, I understand Your Honor's point about doesn't it have to be a verified complaint. The answer, you're right, of course it has to be. But the problem is it doesn't have to go into all the parties' disputes in order to put before the Court a request for injunctive relief. And (indiscernible) Your Honor --

THE COURT: That's fair. That's fair.

MR. COUSIN: -- that's a New Jersey procedural rule that we cited, that's N.J.S.A. 2A:23B-8, that says that there must be the existence of a pending arbitration in order for the Court to essentially grant injunctive relief in aid of an arbitration. It is the whole point.

But if you take a step back and you look at

the other side's initial order to show cause and moving papers, they didn't even tell the Court that there was an arbitration agreement, much less tell the Court that there was an arbitration that was filed or going to be filed. They just completely avoided the issue and didn't inform the Court of their obligation to commence this action on the merits in arbitration, and that's what happened here.

And the reason they want to do that is they are betting that Mr. Krikorian would rather settle and avoid having his good name and reputation tarnished in a public forum. So they went out of their way to file a public complaint so they could try to embarrass and harass him. That is not proper conduct under any rules.

And again, yes, I've been involved in many cases on both sides of this issue where a party sought preliminary injunctive or TRO relief from a court in aid of an arbitration. But every single case where we've done that there's been a pending arbitration or a promise that we were going to shortly commenced in arbitration.

Under New York law you can do that. You can basically say, you know, we're putting together an arbitration right now and, you know, just we need

preliminary injunctive relief to protect the claims that we're going to assert in the arbitration court. So you can do that under the CPLR in New York.

But New Jersey doesn't even allow for that. New Jersey says you have to have a pending arbitration. So not only did they get the incorrect forum completely, because they went to New Jersey Chancery Court instead of going to a New York arbitration -- well, I guess they could have gone to a New York court, but they decided they didn't want to do that, so they went to New Jersey Chancery Court. So it's not the correct forum in the first place to be even hearing any of this.

And then under New York law, which the parties agreed to under Section 10.3 of their operating agreement, it says right in there that New York substantive law applies. So -- and what does that mean? We have to look at what would happen, what would a New York court do if presented with this type of situation? And they haven't come anywhere close to meeting the standard under New York law.

So we know that New Jersey doesn't allow this because New Jersey says you have to have a pending arbitration. New York gives you a little bit of wiggle room and says, you know, you can intend to file an

arbitration. But they haven't even said that. We gave them an opportunity to come back to us after our motion papers and say we intend to file arbitration. We're going to file an arbitration, don't worry about it. They didn't do that.

So I don't know what basis under law, fact, procedure or otherwise that they are proceeding under. It's completely improper. So that's why, you know, if you sense I'm a little bit worked up, I just don't understand how an experienced lawyer can bring this complaint before Your Honor and seeing preliminary injunctive relief that they've done, especially in light of the fact that we made them well aware, if they hadn't already read it themselves, of the arbitration agreement. Under New York law this broad arbitration language is not just an agreement to arbitrate. It's a delegation under New York law of even the issue of whether a particular cause of action is arbitrable.

So what we're saying in our reply papers, because we didn't know what position they would take in their opposition to our motion, but they decided to pivot, and they decided to say, oh, okay, we understand there's an arbitration clause, but we -- you know, we can satisfy the CPLR requirements for being able to get preliminary injunctive relief. Well, they have not

done that. They have absolutely not done that because given this broad language, under New York law that is deemed to be a delegation not just of the underlying merits of the case, but of the mere issue of what causes of action are arbitrable.

So New York law is so powerful (indiscernible) that it requires the judge to basically take a look at the language in the arbitration clause and say, oh, this is a very broad and all-encompassing arbitration clause, I can't even rule as to whether or not, like they say, cause of action number three, and cause of action number five for the individual plaintiffs are somehow not included within the arbitration clause. Well, that issue is not even before the Court based on New York law that says that the entire matter is delegated to an arbitral forum. So the arbitrator actually gets to make the decision. Okay.

Which of these causes of action are covered by the arbitration clause now? The other side says claim three and claim five are not covered. Okay. We'll prove that. That is all supposed to happen in the Triple A, not before a court.

So there's (indiscernible) --

THE COURT: (Indiscernible) Mr. Derman.

MR. DERMAN: Thank you, Your Honor. Thank you. I may regret the next time I let my adversary in this case go first. I don't think I've been accused and called the names he's called me in the short time we've been (indiscernible) together, but here we go. (Indiscernible) not to embarrass or harass Mr. Krikorian, because we tried not once, not twice, not three times, but four times to get him to agree to the most basic concepts that would avoid us having to come to court, and that is don't disseminate confidential information, stop acting on behalf of an entity that we are a majority (indiscernible), and stop taking action adverse to the entity, as the operating agreement requires you to do.

He ignored each one of those, so left with no choice we did what every other litigant is entitled to do, which is come into this court where the majority of the actions of the operations of Hyegate took place in New Jersey and ask for injunctive relief. And, Your Honor --

THE COURT: Hold on, Mr. Derman. Mr. Krikorian, please just -- (indiscernible), your face is right by me. When you're shaking your head and nodding affirmative, and disagreeing it's distracting. When you're 35 feet (indiscernible), sitting at a table or

in the gallery in my courtroom I (indiscernible). If -- if -- just please, I don't need the editorial. It doesn't help. Please. Go ahead, Mr. Derman.

MR. DERMAN: Thank you, Your Honor. We laid out our claims in a full verified complaint, antici -- seeking injunctive relief, as we are allowed to do, anticipating we'd lay out a full story, anticipating that they would come back with arguments or contentions factually opposing our -- our -- our telling of the story. That's why we laid the whole thing out.

By the way, they never came to me after we filed it and said, hey, Mr. Derman, there should be an arbitration, you know, let's agree to go to arbitration and we can have the -- the order to show cause. But no, they just, right before Christmas Eve, filed their motion to compel arbitration.

The concept that a court can't decide this order to show cause because there is an arbitration clause is contrary to every law that we have looked at, New York, New Jersey, the Triple A rules, the statutory law, procedural law, case law. Every single one says the same thing, which is that the courts are empowered, have the right, and in some cases responsibility to hear an application for injunctive relief regardless of whether there is an arbitration clause.

We can start with CPLR 750.2 in that it says a court may entertain an application for an order of attachment or for preliminary injunction and condense it with an arbitration that is pending, of that is to be condensed inside or outside the state. By their own words there is no allegation that an arbitration has to be filed.

And in fact -- you know, they say because we didn't say that we intend to file it that somehow the rule doesn't apply, that makes no sense. They filed a motion to compel arbitration. We're either going to have this case heard here, or it's going to go to an arbitration. And if the Court needs me to say that if the Court needs me to say it on the record, if the courts are going to hear it I'm going to file arbitration, I'll say it, I'm saying it. If I need to amend the complaint to say we intend to file an arbitration for all claims (indiscernible), I'll do it.

But it's not -- the law doesn't require it once you (indiscernible) file, or to say you're going to file that. In fact, if you look at CPLR 750.2(c), it provides this exact circumstance. It goes on at the end of the paragraph to say if an arbitration is not commenced within 30 days of the granting of the provisional relief, the order granting such relief

shall expire and be null and void, and -- and including -- and costs, including reasonable attorney's fees ordered to the respondent.

So the Court may reduce or expand the period of time (indiscernible). They could say make them file an arbitration within two weeks, ten days, 20 days. It's right there. The Triple A commercial rules say the same thing. They talk about Rule 39. But Rule 38 says a request for interim measures addressed by a party to a judicial authority shall not be deemed incompatible with the agreement to arbitrate or waiver of the right to arbitrate.

They say that -- they -- although originally they said New York law applies, now they say New Jersey law applied. Okay. N.J.S.A. 2A:23B-8, before an arbitrator is appointed and is authorized and able to act, the court in such a summary action, upon application of a party to an arbitration proceeding may for good cause shown may enter an order for provisional remedies to protect the effectiveness of the arbitration. Nowhere in that statute does it say you have to have filed an arbitration. It makes -- it makes no sense.

I think, when you look at the case law I think a really good case to look at is the Ortho

Pharmaceutical Corp. v. Amgen case. It's a Third Circuit case. And there the Court considered as a matter of first impression in this circuit, the Third Circuit, whether a Court has jurisdiction to bring injunctive relief in an arbitrable dispute. And throughout the case they talk about an arbitrable dispute. Is there an arbitrable dispute? That's the question here. Never says -- it never says you have to have filed an arbitration to get injunctive relief. It turns it completely on its head.

And lastly, they say, well, it's for the arbitrator to determine what claims should be subject to arbitration. Well, if that's the case -- if that is the case, Your Honor, then according to them we could never be heard for injunctive relief because they would say, well, we think all of these claims are subject to arbitration so, you know, you can't hear the injunction. It just -- there's no law that says that you have to have filed an arbitration, or stated an intention to do so to get interim relief.

For all we knew Mr. Krikorian would have -- could have waived that arbitration clause, and then agree that he wanted to be in Chancery Court. We don't know that. Now --

THE COURT: Well, we know it now.

MR. DERMAN: We know it now. That's right.

They otherwise argue that we're not seeking to maintain the status quo, and they flip-flop back to the CPLR and argue that we can't obtain a preliminary injunction unless we show that without it an arbitration award would be rendered ineffectual. To be clear, that is not a new or different standard. It is precisely the preliminary injunction standard that is articulated in Crowe. And we know that from the cases, because the Ortho Pharmaceutical case that I just pointed to is very clear about that. They have a really nice discussion, and they say, among other things, "As our previous discussion indicates, we disagree that (indiscernible) of the status quo operates as a separate test for determining whether the District Court should act within its jurisdictional authority. Rather, preservation of the status quo represents the goal of a preliminary injunction --" I'm sorry -- "the goal of preliminary injunctive relief in any litigation, including an arbitrable dispute."

And the cases that were cited to in New York, the Brachler (phonetic) case and the Ciprio (phonetic) case, they all go through the regular standard for preliminary injunction. And on this -- and this is the important part, where Your Honor started today. On

this record there has been no dispute as to the facts that we set forth and our need for injunctive relief. Mr. Krikorian has had this (indiscernible) for a month. One month. He has not put in anything other than the claim this should be heard in an arbitration. Nothing. There's no certification from him. There is no argument that the facts are not true. Nothing. There is nothing. He had the opportunity to. Your Honor gave them that opportunity to, and they chose not to, and that's because they can't dispute them.

Your Honor, these are basic facts that we've set forth, and they are, to summarize, we -- our clients put in billions of dollars into this entity, and at some point when Mr. Krikorian asked them for more money they said they did not want to put any more money into the entity, and he turned on them at that moment. He tried to raise a sale, and he pressured them and strong armed them to agree to his demands for a sale. And that included turning over their interest in the entity immediately to him for nothing. And when they pushed back on that he showed his true colors and became hostile and angry to them.

And so they then reached out to him and said would you please not take any action on behalf of this entity? Please confirm that. And he didn't confirm

it. And they asked for it again, and again. And then when they didn't hear from him they called notice of a special meeting and asked him to pass a resolution that he not act on behalf of the company or adverse to the company. And instead of following that he began interfering with their customer relationships. How do we know that? You can look right at the exhibits attached to their complaint. Exhibit Y. He is basically telling a customer that Hyegate's subsidiary breached its contract with them. Telling that customer right in here.

It gets worse. On November 28th, 2025, the Court can look at Exhibit DD, this attachment was filed under seal, he provided the customer with the monthly sales reports, production figures, accounts payable, all confidential information of the entity, gave it to their customer.

He also filed a letter with the Health and Labor Department in Armenia which triggered an inspection. And I know they might say that they're entitled to file a whistleblower or do things like that, but the point is he is absolutely and unequivocally acting adverse to the entity of which he is a member and a manager. There's no question. And why is he doing that? Exactly what we said in our

papers, which no one has disputed, he is trying to drive the value of Hyegate down, and its subsidiaries, and force it into bankruptcy so he can scoop it up for himself, which is exactly what he tried to do before we got here.

So we are asking for three basic things which any other litigant would have agreed to. Number one, enjoin him from not disclosing confidential information. Basic. They say it's vague, it's unclear what they want. But, Your Honor, it's defined right in the operating agreement. It defines exactly what confidential information is right in Section 75. We want to enjoin him from taking any action on behalf of Hyegate. He is a minority member. The majority rules in this entity. Stop acting on behalf of Hyegate. Simple. Stop him from taking actions adverse to Hyegate or its subsidiaries. Simple. And it's completely consistent with the operating agreement, Section 6.8. He has duty of loyalty to not act in a conflict to Hyegate.

Those are the three basic things we've asked for. They've had a month to oppose them on the merits, and they haven't. They haven't -- they haven't addressed the standard for preliminary injunction. They haven't disputed that we'll suffer irreparable

harm. In fact, the operating agreement itself provides that the disclosure of confidential information will result in irreparable injury for which we are entitled to obtain a temporary restraining order or preliminary injunction (indiscernible). It's right in the agreement (indiscernible).

Balancing the equities, there's no reason why he would be harmed by doing these -- being ordered to do these basic things that (indiscernible) agreed to.

THE COURT: The law requires -- but let's just not forget the fact that you can't actively, regardless of the operating agreement, act in these ways --

MR. DERMAN: Exactly. (Indiscernible).

THE COURT: We don't need an operating agreement to tell us that he can't do the things you're asking him not to do. Now I know that cuts both ways. I'm sure Mr. Cousin is going to say we don't need -- we don't need interim relief to require him to act within the bounds of the law and his fiduciary obligations as a member of (indiscernible). Mr. Cousin, I'll -- duly noted that that's your argument, but I'll get into --

MR. COUSIN: That's exactly right, Your Honor.

THE COURT: -- whether or not it's necessary

under the circumstances.
MR. COUSIN: Your Honor, can --
MR. DERMAN: I think -- let me just finish.
THE COURT: Not yet. He's not finished. I kind of interrupted him, so --
MR. COUSIN: I apologize.
THE COURT: I don't want to have the two of us interrupting him.
MR. COUSIN: Understood.
THE COURT: I'll let you speak, but let Mr. Derman finish.
MR. DERMAN: Thank you, Your Honor. I appreciate that. And I appreciate the recognition that it's required under the law. The reason that we are asking for it now is because we did what good litigants should do, which is demand it before going into court. And we did that and we were ignored and rebuffed. And we provided the documentary evidence that he's breaching his obligations. So those are the reasons.
Whether or not the Court -- so that's why we think this is the TRO to be decided now. If they want to make a motion to compel the whole thing to arbitration maybe he and I can agree on what claims --
THE COURT: We did -- we did make a motion to -- to -- he did.

MR. DERMAN: Okay. Your Honor, fair. Whether -- I was going to say after this is decided he can renew that motion. That's fine. But it doesn't matter. That's irrelevant to the issue that was filed on December 9th, our entitlement to injunctive relief. And the concept that this Court can't rule on that because an arbitration has not been filed is not supported by any of the law. New York, New Jersey statute rules arbitration (indiscernible). Thank you.
THE COURT: Mr. Cousin, do you want to address anything that he said, but including what -- what I pointed out that I've had this argument in these situations before when there's an allegation of an individual member of an LLC who is alleged to be acting contrary to an operating agreement, but also it goes without saying you can't do those things because it violates their obligations as a member of an LLC (indiscernible).
MR. COUSIN: So --
THE COURT: Do you take the position that the Court need not order what he is otherwise bound by law on?
MR. COUSIN: Yeah. I agree with that, Your Honor, but I'll go a step further. This is what I was going to say before, which is that the cases that are

cited in opposing counsel's brief for this type of relief for a -- you know, preliminary injunction or a TRO in the heat of arbitration.

All of those cases are inapplicable because they have a very, very narrow focus. If you look at those cases, and one of the cases is one that I actually litigated in the Southern District of New York, but those cases all talked about a very specific contract being preserved pending arbitration. So the litigant goes in and says, you know, the other side wrote to us and says they're going to terminate this master services agreement, but the agreement is subject to arbitration. So we filed an arbitration, but in the meantime please tell the other side that they can't terminate the master services agreement at this time. So we want a status quo injunction to protect against the termination of the master services agreement.

So, in fact, two of the cases out of the four that they've cited to support the idea of CPLR 7502(c) injunction stands for that exact proposition, that there's a master services agreement that needs to be preserved pending arbitration. Okay?

THE COURT: Yes.

MR. COUSIN: The other thing is (indiscernible) are about waiver. It has nothing to do

with this at all. So, you know, they have not cited a single case. And in our research we couldn't find a single case (indiscernible).

THE COURT: (Indiscernible).

MR. COUSIN: Yeah. Maybe, Your Honor. Maybe. So, you know, what I was going to say is we couldn't find a single case where this kind of broad, you know, responsibility or, you know, restriction is being placed on an individual like Mr. Krikorian when he was already governed by, as you point out, Your Honor, those fiduciary responsibilities (indiscernible).

So there's not a single case that says, okay, we're going to restrict somebody from taking affirmative actions. If you look at the operating agreement, the operating agreement --

THE COURT: Hold on. Hold on. Hold on. We've got some feedback in the background. I don't know if everybody can hear that.

MR. COUSIN: I can, Judge. I don't know what --

MR. DERMAN: I think it was coming somewhere within the courtroom. (Indiscernible) maybe.

THE COURT: Hold on a second.

MR. DERMAN: We can also -- we can all mute

if that --
THE COURT: Maria, is there anybody in the courtroom that may be causing that interference?
COURT CLERK: Hello, Judge. We have IT here.
THE COURT: All right. Well, they're going to have to wait a minute then, because it's causing a lot of interference.
COURT CLERK: I'm sorry, Judge.
THE COURT: That's okay. It's just -- the shuffling of the papers and moving around the laptop and stuff is causing a lot of interference.
COURT CLERK: Okay. I apologize.
THE COURT: That's okay. Just give us a few minutes. I won't be too long. (Indiscernible). Okay. Go ahead, Mr. Cousin.
MR. COUSIN: Thank you, Your Honor. So what am saying is basically that there's not any case that I am familiar with, and, you know, it would be very unusual for the Court to grant an expansive injunction that basically tells an individual that they can't do certain things that the operating agreement itself allows him to do.
Now, opposing counsel says they --
THE COURT: The operating agreement allows them to do it?

MR. COUSIN: No. In other words, the operating agreement gives --
THE COURT: Bars them from doing it.
MR. COUSIN: No. No, Your Honor, actually yes and no. The operating agreement says that each member and each manager has certain rights and responsibilities, and allows them to actually represent and do things on behalf of the company. Then of course, to Your Honor's point, there are restrictions under the operating agreement about certain other things that can't be done without a majority vote. Okay?
So what I'm saying is the things that they're asking him and saying you cannot do are actually things in the operating agreement that he is allowed to do some of them, like is to represent the interests of Hyegate, for example. That's a specific thing (indiscernible) --
THE COURT: Well, what we have to remember is when we talk about cite (indiscernible), we do this in all cases that are argued, right, we look for -- we look for cases and law (indiscernible) happen to be involved in a case in the Southern District where the facts and circumstances give rise to certain judicial decisions that were relied on.

But we have to operate in this case, and I have to decide in this case what are the factual allegations here? It's not just -- we can't stay at 30,000 feet and say, well, Judge, look at the cases that Mr. Derman cites in support of the requested relief that he's arguing for. First of all, the cases are different. The actions on behalf, by members, managing members and members of an LLC all come in different shapes, sizes, forms and attributes. And we have to look at the allegations and the facts and the certifications for me to determine whether or not it's necessary.

When I bring out the fact that, well, the law doesn't allow Mr. Krikorian to publicize or disseminate to third parties confidential information of Hyegate, sometimes the factual circumstances that are relied on by the movant, the plaintiff, don't rise to the level of clear and convincing under Crowe v. De Gioia, and then often in denying that application I will say well, look, you can certainly renew your application for injunctive relief if the actions, the alleged actions continue or get worse or more evidence is uncovered to determine that the accusations against that member or whatever case that is gets stronger. But we always operate with the umbrella or the backdrop of the law

that supports fiduciary obligations of various members of an LLC.

But then we have other cases. We have other cases where the factual allegations are supported so much, candidly, you know, they will be running through the alphabet in exhibits and we have to start doubling up our exhibits to double A, double B, double C and double D.

MR. COUSIN: Right. So can I just --

THE COURT: Sometimes the Court is clearly convinced based upon the factual circumstances that I need to go above and beyond what the law would generally require, and order certain things. But then the argument on Mr. Derman's side of this analysis would be what's the harm to Mr. Krikorian for being told by this Court to follow the law up front? If Mr. Krikorian disputes, which he hasn't. And I understand that there were some procedural issues, and, you know, there were some reasons why you wanted the arbitration decision heard, and not address factually all the certifications and stuff.

MR. COUSIN: Yes.

THE COURT: And we're laying it all out on the record. The Court is aware, everybody is aware that you want to handle things in a certain manner.

MR. COUSIN: Yes, Your Honor.
THE COURT: But what's the harm to Mr. Krikorian if I enter an injunction that simply says you've got to follow the law, you can't do certain things that are axiomatic.
MR. COUSIN: Understood. And let me just say this, Your Honor, because I don't as a basic matter disagree with anything you said. I think it makes sense. However, in this particular case the other side has not been (indiscernible) to convince Your Honor that there should be preliminary injunctive relief.
THE COURT: Okay.
MR. COUSIN: What I can do is address that, because if you look at all their exhibits --
THE COURT: Well, can you address that? (Indiscernible) the filing, but you're not going to make allegations over facts you didn't file.
MR. COUSIN: And I'm not going to do that. I'm going to make allegations based on facts they filed. Right? So one of the reasons that Mr. Krikorian didn't need to put in a certification --
THE COURT: I'm going to allow you to do that, but you didn't file an opposition to that.
MR. COUSIN: No, I did not, Your Honor. And that was intentional, as you point out, that I did that

strategically --
THE COURT: So now how does Mr. Derman -- you know, he's going to argue that I shouldn't consider what you're arguing right now, because you (indiscernible).
MR. COUSIN: Well, no, because Your Honor, before we ask him that question I'm sure he'll agree with you on that, but the two motions, as the Court has recognized, are inextricably intertwined. The motion to compel --
THE COURT: I'm going to allow you, for the record, to argue, so just go ahead.
MR. COUSIN: Thank you, Your Honor. So if you take a look, for example, at Exhibit J of their papers, if you look at Exhibit J of their own papers you will see that Mr. Krikorian, in e-mail correspondence, is basically saying you guys, meaning the individual plaintiffs, have committed all these violations, and have committed breach of fiduciary duty, have breached the operating agreement, have committed various illegalities in Armenia with regard to the subsidiary company that runs the mine there, A.P. (sic) is what they call it. And I will continue to tell my truth and to tell the real story in our correspondence. And if you want to, you can continue

to make up lies about me. Okay? So that's it in a nutshell.

And if you want to get specific, if you look at Exhibit J, the second page of it, has sort of a laundry list that Mr. Krikorian, in his e-mail dated November 28th, 2025, at 3:01 p.m., to the two individual -- actually it's just Saro Hartounian, one of the individual plaintiffs, and his counsel, Mr. Derman, and he is explaining these are the problems with, you know, the individual plaintiff's actions. And so this is evidence. This is in evidence.

So if you look -- if the Court considers this evidence, along with whatever other evidence has been submitted by the plaintiffs, there's no way for the Court to conclude that there's clear and convincing evidence that Mr. Krikorian has done anything wrong, or that the other side is entitled to injunctive relief to protect against him from doing anything wrong.

So if you look at just the basic standard, now, you know, just -- I'm putting all the arbitration stuff to the side, assuming we didn't have an arbitration clause, the other side has come to the Court and said we want a TRO and a preliminary injunction to protect against Mr. Krikorian acting out of bounds, going to represent Hyegate in some manner,

to do something that he shouldn't do in connection with the operating agreement, let's say that was without any arbitration obligation whatsoever and they came to Your Honor, they have not met the standard for irreparable harm. They have not met the standard for a likelihood of success or, you know, clear and convincing showing on the merits. They have not demonstrated the balance of the equities tip in their favor, not by a long shot.

Irreparable harm, they cite one case. And I hate to do this, Your Honor, going back to cases. But they don't --

THE COURT: (Indiscernible) case. I'm just saying they're not always --

MR. COUSIN: I know.

THE COURT: -- the holdings in the case relate to broad principles often --

MR. COUSIN: Right.

THE COURT: -- that we rely on. But they're very -- especially in business litigation the facts are very difficult to duplicate.

MR. COUSIN: You're absolutely right, Your Honor. But there is a principle of irreparable harm in this kind of context.

As Your Honor is well aware, if you can show that the business is basically going to be destroyed as

a result of another side's conduct, that can be viewed as irreparable harm. And that's the one case they cited for irreparable harm. In that case there was an allegation that the other side's conduct was going to completely destroy the company. In this case there's no such allegation --

THE COURT: But wait. Just so I'm clear -- just so that we're clear --

MR. COUSIN: Yes.

THE COURT: -- you agree that that case is precedent, that in a circumstance where a court feels that there are -- it is clearly convinced that the activity of the -- or the allegation can result in the complete decimation of the company, the court -- the court's action in granting injunctive relief would be appropriate? I know you're saying this is not those facts.

MR. COUSIN: Right. And --

THE COURT: And that that case hasn't been challenged. It's good law.

MR. COUSIN: Yes.

THE COURT: It's been relied on. I can't even count the number of times that that case has been cited in this courtroom.

MR. COUSIN: Yes.

THE COURT: It's really, again, back to my original premise, and your argument, I understand your argument, is this case is different from that case because the plaintiffs' argument that Mr. Krikorian's actions could not, will not result in that type of destruction to the company is a factual argument.

MR. COUSIN: Yes, Your Honor.

THE COURT: But it's not -- the law doesn't support my decision if I found those facts. The issue is does this record such a finding?

MR. COUSIN: That's right, Your Honor. And what I'm saying is if you looked at all the exhibits that they've put in, they talk about Mr. Krikorian damaged the company by a couple hundred thousand here, or a couple hundred thousand there, they then go on to say that their interest in the company should be bought out for something like 3.1 or 3.5, depending on which statement you look at, million.

And so, if you have a company that's at least worth over $3 million, according to the other side, a few hundred thousand dollars of damage is not destroying the company. Okay?

THE COURT: Well, I think, Mr. Cousin, that -- that logic is -- that logic is the following, a plaintiff who sees a pattern of behavior, now, again, I

know you're not conceding that Mr. Krikorian did those actions --

MR. COUSIN: Correct, Your Honor.

THE COURT: Right?

MR. COUSIN: Yes.

THE COURT: But the plaintiff is arguing, Judge, we got into court and we're arguing that a business worth -- I'm using round numbers --

MR. COUSIN: Yes.

THE COURT: -- a business worth $3 million, and damages to the tune of a half a million dollars doesn't destroy the company.

MR. COUSIN: Correct.

THE COURT: That -- that argument is -- now, the plaintiff isn't able to come to court and establish a pattern that would lead to the destruction of the company because we got into court and preserved our rights ahead of time. We have to wait until we're really harmed, that he does even more damage, to a tipping point where the company has been perhaps so damaged so far that now we don't even have the ability to say that it matches the case, and that the corporation -- or the business, the LLC, is on the verge of being worthless.

MR. COUSIN: Right.

THE COURT: That seems to be a timing argument that doesn't seem to be supported by law. Mr. Krikorian, I'm not going to hear from you without your client -- without your attorney allowing you to speak.

MR. COUSIN: So, Your Honor, just on that point, it's an excellent point, and I do agree that there are cases that show this sort of pattern and say you don't have to wait until the company is completely destroyed in order to make this application and show irreparable harm. But in this particular case there are only a few very specific instances over the course of many years. Okay?

A lot of -- if you look at what they're alleging they're talking about improper conduct that was done in 2019, and another thing that was done in 2023. These are not even proximate acts. Okay? So where is the act that says that in 2025, one month ago, Mr. Krikorian threatened the very life of this business? It doesn't exist. There's no allegation, there's no fact before this Court that says that there's currently emergent action that needs to be taken by the judge to stop Mr. Krikorian from damaging the company to the point of no return. There's no fact on that anywhere to be found. All these facts are years ago. So how does this even make any sense in the

context of a TRO or preliminary injunction? It doesn't, at all.

So I understand Your Honor's point, and if you go through, like I did last night until four in the morning, reading every single page that they put in in all these exhibits, I promise you there's nothing in here that says that Mr. Krikorian either has done or is threatening to do some action that is going to destroy the company now. And that, under the law, is not irreparable harm for the purposes of a TRO or preliminary injunction.

Secondly, they have not met the standard to show likelihood of success or any reasonable possibility of success on the merits. They have not. If you look at it, they have a contract claim, they have a breach of fiduciary duty claim, they have a fraud claim, they have a defamation claim, and another sort of dissolution claim, which really is not here or there because they have to do that in New York anyway, and they don't qualify for that relief.

So if you break it down, where is the breach of contract that Mr. Krikorian engaged in that they have a cause of action right now? It's unclear. It's not clear what Mr. Krikorian has done. If you look at their e-mail trails up and back, Mr. Krikorian says you

accused me of doing this, I did not do this. I don't have to put it in a certification from Mr. Krikorian. It's right in their own papers. Mr. Krikorian is denying the allegation that he did anything improper, or breach of contract, or breach of the operating agreement.

The same for the breach of fiduciary duty claim. They say you got -- you, Mr. Krikorian, did this, and you committed this fraud, and this was improper, and you shouldn't have allowed this contract to go through, or you disclosed this confidential information, and Mr. Krikorian comes back and says when the authorities ask me for information about something I have a fiduciary duty. I'm the one who is protecting the company. I'm the one who is doing what needs to be done to protect this business and to protect these assets.

So therefore you have two sides. If you look at this, I tried to be very neutral in reading this last night, and you see all this correspondence, and you've got these business partners for years who are friends who are working together, and now they're -- excuse my language, Your Honor, they're sort of crapping (sic) on each other. They're saying, you know, you're doing this wrong, and then Mr. Krikorian

is saying no, you did this wrong. And they're going up and back.

So how can the Court, based on this kind of, you know, mud throwing by both sides, how can the Court conclude that the plaintiffs have demonstrated any kind of likelihood of success, or reasonable chance on the merits? It makes no sense. It's basically a stalemate, and it's going to have to be litigated in an arbitration to figure out who gets the better of it by the preponderance of the evidence.

We don't know that today. We don't know how that's going to turn out. And there's certainly not a lopsided thing unless you, you know, Mr. -- agree with Mr. Derman's point is they didn't put any opposition papers in. Well, the last I looked is they have the burden of proof on a TRO and preliminary injunction. I don't have the burden of proof. Mr. Krikorian doesn't have the burden of proof. Mr. Krikorian wants to say something.

MR. KRIKORIAN: I -- I do. Your Honor, if -- and I'm not (indiscernible) on the merits, I'm a law professor. I think you (indiscernible) --

MR. DERMAN: Your Honor, please note my objection to his testimony now.

MR. KRIKORIAN: I'm not testifying. I'm

(indiscernible).

THE COURT: Mr. Krikorian, I'm going to swear you in. If you're going to -- if you're going to make a statement in a court of law, then you're going to do so under oath. So raise your right hand.

MR. KRIKORIAN: And this is understood that I'm not waiving my (indiscernible)? Does Mr. Derman consent to that?

THE COURT: I'm not asking you for your input. You seem to believe that because you -- you're raising your hand at me as a litigant that -- and that you're a law professor -- are you licensed to practice law in New Jersey?

MR. KRIKORIAN: No.

THE COURT: Okay. So you're speaking as a litigant or --

MR. KRIKORIAN: I'm speaking in my own defense.

THE COURT: Okay. So you're going to do so under oath. I'm not asking you whether you're waiving anything. You're not going to make a statement in court that Mr. Derman isn't going to be able to use --

MR. KRIKORIAN: Okay.

THE COURT: -- at some later point if he thinks it's necessary.

MR. KRIKORIAN: Well, I would be happy to be sworn in, Your Honor. I am not afraid.
THE COURT: That's the way we operate in court.
MR. KRIKORIAN: I'm not afraid.
THE COURT: Okay.
V A N K R I K O R I A N, DEFENDANT, SWORN/AFFIRMED.
THE COURT: Okay. And you are Van Krikorian?
MR. KRIKORIAN: Van Krikorian, defendant in this case. Thank you, Mr. Cousin, for allowing -- I'm going to be very brief (indiscernible) --
THE COURT: Please be brief, because I've been giving this a lot of time under oral argument --
MR. KRIKORIAN: I appreciate that, Your Honor. But -- and I'm more familiar with the facts than anybody else, I believe, if you look through their documents carefully, as Mr. Cousin invited you to do, you will also see that there has been a pending criminal investigation of one of the plaintiffs, Nareg Hartounian, which began in 2022. And really what this case is about is covering up criminal activity that I don't want to be associated with. It has to do with substantial illegal mining, major penalties. Mr. Derman and his client referred to it in their papers, so you can see (indiscernible).

This is not a case about a simple business dispute. This is a case about substantial illegal activity. And I'll stop there.
MR. COUSIN: Thank you, Mr. Krikorian --
THE COURT: I've -- I've got enough. Mr. Derman, do you want a brief reply? It was your motion.
MR. DERMAN: Very, very brief, Your Honor. Very, very brief. And obviously we dispute Mr. Krikorian's, you know, self-serving statements. That is the reason why we gave a lot of background in the verified complaint, because we -- we antici (indiscernible) is not true. That's why we included it. But just a couple quick points. One is they had, as Your Honor recognized, a long time to put in facts before this Court, and they didn't. And the argument by Mr. Cousin that there are no facts in front of Your Honor that shows breach is just not the case. One, there is a document (indiscernible) showing the disclosure of confidential information. That violates the provision in the operating agreement which prohibits disclosure of confidential information. Clear as day.
Number two, we've provided exhibits attached to the complaint, Exhibit X and Exhibit Y, which show Mr. Krikorian acting adverse to the interests of the

entity for which he is a manager. One of them is an e-mail to the biggest customer, baiting him into -- into believing that there was a breach of contract by the entity that Mr. Krikorian is a manager for. And the other is him filing a complaint with the Department of Labor in Armenia.

So the idea that there's no evidence before the Court that he is acting adverse to the interests of the entity is absolutely not true. And those -- we tied them right to the operating agreement, which provides, number one, that he can't act in conflict, and I think Your Honor recognized that. It's also consistent with the law.

And also, Your Honor, a majority rules. And so this majority has told him to stop acting for the company because he's clearly adverse to them, and he won't listen. And that's why we brought the application. And he is not listening to us, and that's why we need the Court's relief. Thank you.

MR. COUSIN: Your Honor, can I say one more thing?

THE COURT: You can't keep going back and forth, Mr. Cousin.

MR. COUSIN: Well, just because Mr. raised the point, I think, you know, you're talking about

status quo injunction, and the status quo has to be looked at not just as the status quo today, but what's called the status quo (indiscernible). And as we pointed out in our reply brief, what's very important to look at is what was the status of the parties prior to their argument, or prior to their disagreement? And, you know, what Mr. Derman is talking about is a resolution that was passed by two out of the three members in the company after the dispute was already out.

So what the Court is supposed to do is go back and take a look at what is the status quo prior to that disagreement? And in fact, the case that they cite, that has to do with that exact point, dealing with the General Mills case that they identified in their brief, General Mills is a 2020 Westlaw 915824 case. If you take a look at that case, with quotes from the Second Circuit case from 1984, it says when you're looking at situations like this you have to look at the status quo (indiscernible), which is the status of things before the parties dug in in their dispute.

And so what our position is, and the Court should adopt this view, that the resolutions passed on November 20, 2025 by two out of the three members behind for Hyegate are null and void. They should be

null and void, because those resolutions were passed by two individuals who had a conflict of interest and should not be permitted to be the status quo for the basis of any TRO or preliminary injunctive relief.

What is the status quo, if the Court is looking to preserve the status quo, would be the normal operating understanding under the Hyegate operating agreement prior to that November 20 resolution.

So I think that's a very important point, because Mr. Derman is saying, look, these resolutions were passed by two out of the three of the members, so the Court -- all the Court has to do is basically say follow those resolutions.

THE COURT: Do the resolutions remove him as a managing member?

MR. COUSIN: They do not.

THE COURT: So that would be the -- that's the type of (indiscernible) we're talking about. If the resolution removed him as the managing member, and we go back to the status quo as you argue --

MR. COUSIN: Yes.

THE COURT: -- that would be something that -- the argument -- Mr. Krikorian, I'm not hearing from you anymore.

MR. KRIKORIAN: I -- I was not the managing

member, Your Honor.

THE COURT: I'm not hearing from you anymore, so please don't raise your hand. Okay? My point is did the resolutions change his status or his -- his position within the corporate structure or the LLC?

MR. COUSIN: It did to the extent that -- and I pointed this out before, under the operating agreement each member had the power to bind the company on various things. So now they're saying we passed the resolution saying Mr. Krikorian can no longer bind the company on anything.

THE COURT: Mr. Cousin, I'm going to cut you off. I've heard enough.

MR. COUSIN: I understand.

THE COURT: I've heard enough. I -- and again, I only say that because I do -- I always say, and because it's the truth, oral argument is not some perfunctory exercise in my courtroom. It's not. I don't come here with some predetermined, pre-drafted decision that I'm going to read after giving everybody five, ten minutes of an ability to argue. You can see I actively engaged in the -- in the oral argument, and posed questions, and -- and -- you know that I read the paperwork. You know that I read the applications, because I think it comes across that -- I'm telling you

I did, but I think it comes across that I have.

And the only reason I say I'm not going to hear any more is because I've given both sides plenty of time to enhance their documents. And even in Mr. Krikorian's case, Mr. Cousin, I've allowed you to argue quite liberally in a motion that you didn't formally oppose.

MR. COUSIN: Understood, Judge.

THE COURT: So I just have to make a ruling at this point. Number one, I've heard everything that I need to hear. I have read everything, and I appreciate that both Mr. Derman, Mr. Cousin, and the rest of the attorneys here are advocates for a particular client and take a particular position. And I don't expect you to agree, and in fact I expect you to disagree as to the allegations and the defense of those allegations.

But let me start by simply saying this. There doesn't appear to be -- the motions have already been filed (indiscernible) Mr. Derman and the plaintiffs that this matter should be moved to arbitration. The argument is -- and I wholeheartedly agree with CPLR 750.2, Subsection (c), the New Jersey statute. Respectfully, Mr. Cousin, I disagree with you with regard to whether or not they can bring an

application for injunctive relief. It doesn't require that the arbitration be filed. It has to be -- that it is to be commenced is what the language specifically says. And that could not be more clear. And the New Jersey statute is clear. It doesn't have to have been filed. It has to be considered.

And I'm telling you, you forced their hand. You filed a motion to compel arbitration. That motion will be granted. This matter will be transferred to arbitration, Mr. Derman, because it is subject to an arbitration provision that is clear on its face.

However, going a step back, the fact that a verified complaint is required in order to file an order to show cause is also part of our court rules. The case can be heard by the Court absent a complaint. And I'm not going to -- I'm not going to find that Mr. Derman has to only allege a count in the complaint that centers around the injunctive relief, that he can't lay out his theory of the case, and (indiscernible) upon which he will rely in arbitration from all the causes of action that he believes, on behalf of his client, are valid claims.

In fact, it's incumbent upon him to lay the whole case out before this Court. And I looked at the complaint, and then I looked at all of the exhibits.

And as I said, it's not -- it's not (indiscernible). Let the record reflect I'm holding it up. It's quite a filing. It's not a matter of the weight of it. And it's not a matter of the fact that we, you know, ran through the alphabet here and had to go up to Exhibit double D in terms of support for the application, and the order to show cause. But I've read it all. And it doesn't undermine the application for injunctive relief that is supported by our case law, supported by the statute, supported by CPLR 750.2.

So I am going to consider the injunctive relief. At the same time I am going to compel arbitration. All right?

Now, let me -- let me get into -- and I commend the attorneys on both sides. Let me say that before I render my decision. Obviously everybody is well represented here. And I appreciate the arguments that are made. But I often start my decisions with -- on orders to show cause on Crowe v. De Gioia by reading the -- an excerpt from Bhagat, B-h-a-g-a-t, v. Bhagat, 27 N.J. 22, a Supreme Court case in 2014. And all it is it sets forth the model jury charge 1.19, which talks about the clear and convincing evidence standard.

The clear and convincing evidence standard is the highest standard imposed upon a civil litigant.

Clear and convincing evidence is evidence that produces in the mind a firm belief or conviction that the allegations sought to be proved by the evidence are true. It is evidence so clear, direct and weighty in terms of quality, and convincing as to cause the trier of fact to come to a clear conviction of the truth of the precise facts in issue. The clear and convincing standard of proof requires that the result shall not be reached by a mere balancing of the doubts or probabilities, but rather by clear evidence which causes the trier of fact to be convinced that the allegations sought to be proved are true. That's the standard upon which I am supposed to go through, and hold the plaintiff to in their (indiscernible), their burden of proof in asking for the injunctive relief that is being requested here.

We know that this (indiscernible) stated, we know that this is governed by Crowe v. De Gioia, 90 N.J. 126, the seminal case on order to show cause and the four factors that the Court should go through in determining whether injunctive relief is required, or appropriate, I should say. Irreparable harm, well-settled claim, success on the merits, and the balance of equities.

I have already, through my questions,

indicated how I feel about irreparable harm, and I will say for the record that the case that is cited, I don't have it directly in front of me, but the case that we're talking of that talks about -- and there's -- no party disputes that if a business is in jeopardy of being destroyed, for lack of a better word, that that qualifies as irreparable harm.

And although, Mr. Cousin, I -- I firmly state for the record that you do not concede any point certainly in the facts in this case, and that is well known, I think you agree that if the Court is to find that the plaintiff (indiscernible) gets before a court on a set of facts that the court is convinced establishes that this is on the verge of destroying the company, that we need not get to the point of no return on irreparable harm and the destruction of the company, for the Court to then be able to act pursuant to the case law.

And again, I know you disagree factually, but legally I -- that is not a requirement. And I believe that getting before a court with evidence that if it continues could lead to the destruction of the company is sufficient as a matter of law.

And I do find -- I do find, based upon the actions -- and again, there is a well-supported

certification attached to this order to show cause that goes on at length, Exhibit DB is just one completely head-scratching exhibit as to what justification would there be to reach out and send that information to a client? That doesn't fall under any sort of allegation, and there is a theme that seems to be a cloud that seems to be hanging over the defense position here, which is this concept of whistleblowing, and the concept of this alleged criminal activity, and the obligations of somebody that doesn't want to be wrapped up in some criminal investigation. That's fine.

And nothing that I would rule -- nothing that I rule would stop a valid claim that would subvert activity that is truly a form of a quote, unquote, whistleblower. Okay?

And the e-mail between Mr. Krikorian and his fellow members, does that provide some context upon which Mr. Krikorian views this? It does. But that's not the allegation here, because that's -- that's exactly what Mr. Derman is looking for, which is communication between the members, and not disclosing information outside the structure of the operating agreement and its members, who are not always going to agree, and more likely now will they disagree.

However, this application is supported and re-supported and backed up and corroborated by actions that absolutely support activity that it goes in complete contrast to Mr. Krikorian's obligations to his fellow members under this operating agreement. My ruling does not interfere with his legal rights to be a whistleblower in this anywhere. However, that's not what this all is. There is something there there with regard to the allegations about why Mr. Krikorian, and I don't know all the reasons.

And one of the things that is difficult in all orders to show cause is I have a certification. Okay? I don't have one from Mr. Krikorian, but I have a certification, and in these applications I'm asked to basically render a decision, and then (indiscernible) that it's not going to remain here, it's going to be an arbitration. But then, as discovery unravels to see if the verified complaint and the certifications provided by the plaintiffs in this case turn out to be supported by continued discovery and the information down the road, it would not be the first time, if this matter remains here, where those allegations become stronger and more clear, or quite clearly they fall apart.

And the Court goes back and says I understand during the order to show cause phase that I was clearly

convinced that there was something there there, however, in my final ruling it is completely headed in the other direction. But all I have in these order to show cause are the facts relayed before me sworn to be truthful, and they're not superficial arguments here. They're supported by certification and exhibits.

Now, Mr. Krikorian denies them. He denies them, and -- and I can glean from the e-mail that you point to, Exhibit J, that those represent his denial, and he under oath today said that this is not the case. But I have to look at what's in front of me and explain to the parties am I clearly convinced that there is the potential of irreparable harm to Hyegate? The answer is at this stage, based upon what's before me, there absolutely is. I am clearly convinced that there is irreparable harm if I don't maintain the status quo.

And that status quo (indiscernible) to go back and say, well, before they were fighting they weren't fighting, so maintain the status quo before they were fighting. Mr. Krikorian has both the operating agreement to obligate under, that he is obligated to, and the law regarding the fiduciary obligations of a member, or managing member, or a member of an LLC. But this is one of those cases where after reading a well-supported complaint and order to

show cause that I need to take the extra step, and I need to say, Mr. Krikorian, I'm going to remind you of what the law is and what the operating agreement says, and that you are not to take the steps as set forth in the proposed order, Paragraph A. I shouldn't need to tell you those things, but I do, and I am, and I am ordering the injunctive relief that is set forth there.

Now, as to well-settled claim the law is clear. With regard to these facts if, as true, this is a well-settled claim. It also indicates that these facts as I find them to be clear and convincing, would indicate that the plaintiff has a high likelihood of success on the merits. A high likelihood of success on the merits.

And then the most important factor, at least in this case and as I see it, is the balance of equities. Again, to be clear, and Mr. Derman, I want to make myself crystal clear, there is this I call it a cloud, but there is this undertone here that Mr. Krikorian believes that he is -- or appears to be setting himself up, claiming that he is some sort of whistleblower, and he might be. And I am not going to enter an order that is going to infringe upon his statutory rights and the ability to disclose illegality if that's what it is that he is choosing to disclose.

However, that seems to be an undertone here. But that hasn't been specifically set forth in a certification or claim made in defense of this application. I think it might be intentional. Whatever the case may be, he is represented by Mr. Cousin. Mr. Cousin is an officer of the law -- officer of the court. He understands the law. And he understands what his client can and cannot do pursuant to my order, and what he has the legal rights to do if in fact his allegations there is criminal behavior here, or some regulatory violations that need to be disclosed to the proper authorities.

But that's not what this is all about, at least I'm not (indiscernible) what this is all about. And there could be two avenues here that are going on at the same time. The point is, Mr. Derman made a very compelling application in his submission that I am clearly convinced that these actions may be motivated by an attempt to devalue this company, much as he described in his argument.

I can only go off of what I have in front of me. I allowed Mr. Krikorian to speak himself, and I also allowed his attorney to make argument on the facts before me. But I'm clearly convinced this is necessary.

And I'll step back for a second. I'll go back to what I said before. In these scenarios my argument would be the law requires you to act in the interest of the LLC. The law requires you not to take action against the LLC in disclosing confidential information, as set forth in the operating agreement. And in the absence of an operating agreement the law handles that. There are a whole body of law, statutory law, that fills in for members absent an operating agreement, that clearly and unequivocally addresses the behavior of members of an LLC. So for those reasons, and again, Mr. Cousin, most respectfully, I did read -- you stayed up until four o'clock in the morning, I read myself, and that's my finding today.

Now, this case is not going to stay before me because there was a valid arbitration clause as far as I see it. Again, Mr. Derman, I didn't hear from you on an argument to say the arbitration clause should be stricken because it doesn't meet the required standard of your arbitration clause. That's not what I'm hearing. What I'm hearing is, Judge, you can hear me, you -- you can hear the injunctive relief and send this to arbitration. That's what I heard. And I did review it, under the longstanding case law. Atalese and its progeny and everything, I looked at the clause itself.

So we need not file frivolous motions. This is a valid arbitration clause. It should go to arbitration. But it's going to go there with the injunctive relief in place.

MR. DERMAN: Thank you, Your Honor.

THE COURT: Now, I don't have (indiscernible), but I don't have an order setting forth what -- I have the motion to compel arbitration. I'd rather -- (indiscernible), did you submit an order, Mr. Derman, on injunctive relief?

MR. COUSIN: Yeah. I was going to suggest that Mr. Derman and I work together on -- on something like that, so -- because we understand what Your Honor is looking for now.

THE COURT: Listen, I appreciate that, Mr. Cousin, I really do, because what happens here is I've got to go back and sit down with my law clerk and redraft an order.

MR. COUSIN: Yeah.

THE COURT: Just so the record is clear, I'm not asking you to submit a consent order.

MR. COUSIN: I understand.

THE COURT: I know you have the right to appeal if you don't agree with my opinion. I respect that. But what I would ask is it's very

straightforward, and I do appreciate, Mr. Derman, your very succinct request in I'll call it Paragraph A of your order to show cause with temporary restraints, submit an order that covers that paragraph, and also submit an order that covers that the motion to compel arbitration is granted.

MR. COUSIN: (Indiscernible).

THE COURT: (Indiscernible).

MR. COUSIN: We'll deal with it. (Indiscernible). Yeah. If he can send me the language, I'll send it to him before we submit it to the Court. It will track better that way.

THE COURT: Just -- you guys work together on that and submit it again. It's not a consent order in the form that -- you know, perhaps -- perhaps, and I don't know, perhaps Mr. Cousin will seek review of this Court's decision today. I don't know. Nothing that you submit to the Court is going to be viewed or considered as some consent order. It's simply to make sure that the Court is clear, so that the arbiter is clear, and any reviewing court, if any, is clear as to what I ordered. It will just assist me in getting an order in place right now, as opposed to sitting down Monday, or sometime next week, with my law clerk and cobbling together (indiscernible) prepared by the

Court.

MR. COUSIN: Understood, Your Honor. One point of clarification. The order to show cause as originally submitted by Mr. Derman was requesting a TRO, and so I understand that what we're looking at is Paragraph A of the order to show cause, that being a TRO, not --

THE COURT: I understand.

MR. COUSIN: -- (indiscernible).

THE COURT: I understand. That's why I'm asking him to submit the order.

MR. COUSIN: Yeah.

MR. DERMAN: Is it, though, or is it a preliminary injunction?

THE COURT: It's a preliminary injunction.

MR. COUSIN: Yeah. That's what (indiscernible). No. So, Your Honor, that's where I have a concern, because if it was a TRO, then if we commence -- if Mr. Derman commences an arbitration (indiscernible), the arbitration tribunal at that point, what I might do instead of appealing our preliminary injunction order in the courts, what I might do --

THE COURT: (Indiscernible) ask the arbitrator to lift it?

MR. COUSIN: That's right. And so -- and so I'm trying to save everybody time and money because I can tell you right now if you grant the preliminary injunction, I may have no choice but to appeal that. And I would rather not, you know, have to go through that and spend everybody's time and money on that if Your Honor would be willing to limit this to a --

THE COURT: No, I'm not. You can appeal me, sir, with all due respect. It's a preliminary injunction.

MR. COUSIN: Understood.

THE COURT: And I -- I didn't take it as --

MR. COUSIN: Yeah. I'm not trying to --

THE COURT: You're just being candid with the Court. Again, I encourage -- I'm one of these judges -- I encourage appellate review of my decisions. I really, really do.

MR. COUSIN: Yes.

THE COURT: I do. And that's the system that we have. We're always learning. I do the best that I can under a given set of circumstances. I read everything. I made a decision based upon what I believe is the right decision. I believe a preliminary injunction is appropriate here. I carved out the ability for Mr. Krikorian to preserve his statutory

rights, his legal rights with regard to any action that you guide him to take with regard to the alleged whistleblowing or notifying the authorities of any illegality. And aside from that, it is a preliminary injunction. And if you want to seek appeal of that decision, I encourage you to do so.

MR. COUSIN: Your Honor, just on that point, the only reason I'm belaboring it a little bit is because my understanding from your clerk is that we would have an additional opportunity to fully brief and put in affidavits and --

THE COURT: File a motion for reconsideration.

MR. COUSIN: Yeah. But because I thought this was only on the order to show cause, and not on the preliminary injunction, okay, so -- so that's why I think technically it shouldn't be a preliminary injunction. But I -- if that's Your Honor's ruling I'll have to do what I have to do.

THE COURT: Well, listen, Mr. Derman, you understand what he's saying here?

MR. DERMAN: I do. But Your Honor issued a case management order which gave an opportunity for -- which gave (indiscernible) --

THE COURT: (Indiscernible). Mr. Cousin, now

I feel a little compelled to make a record. This -- you -- you -- you contacted the Court in an effort to -- it wasn't just the holiday and time, it was money. And you had plenty of time to respond to this application. You had -- in fact, the record should note that this was -- we were going to hear this matter before the holiday, and you requested that the matter not be heard, and then you also requested that your arbitration motion be heard first because if it was granted and this other matter was not going to be heard --

MR. COUSIN: Yes.

THE COURT: -- it might save your client the resources and everything.

MR. COUSIN: Right.

THE COURT: Now to come back and make a record to say, well, I was going to be given a fair opportunity, you were given a fair opportunity. This was a strategic decision that you made --

MR. COUSIN: Yes.

THE COURT: -- to go on the arbitration motion, and I extended -- not only did I extend it to early January --

MR. COUSIN: Yes.

THE COURT: -- my -- my office spoke with you

and also spoke with Ms. Shafran --

MR. COUSIN: Uh-huh.

THE COURT: -- and gave you guys additional time, an extra week --

MR. COUSIN: Yes.

THE COURT: -- to file the appropriate papers. So to sit here and say that I haven't been given, or at least to create a record that I wasn't given enough time --

MR. COUSIN: No, Your Honor.

THE COURT: -- (indiscernible) the arbitration or the temporary restraints.

MR. COUSIN: No, Your Honor. That was not my intent to -- that was not even remotely what I was saying. All I was saying was that I was -- I believe it's in writing from the clerk, but my understanding was was that the only thing being heard today was the order to show cause with a request for temporary restraints, not a full-fledged --

THE COURT: Mr. Derman? Mr. Derman, we're going to do this by the law. It's a temporary restraint. We're going to set up another date and make them permanent.

MR. DERMAN: Right. Fine.

THE COURT: I'll set up another date, and Mr.

Cousin will have an opportunity to file opposition. I'm going to compel arbitration, but I'm going to hold off on, subject to a return date on the temporary relief, and Mr. Cousin will have an opportunity to argue, whether or not it convinces me not to -- not to make it --

MR. COUSIN: Your Honor, I really appreciate that. And let me counsel with my client off the record, you know, like once we are finished here --

THE COURT: Of course.

MR. COUSIN: -- and we'll let the Court know whether we want to, you know, submit anything. If we don't submit anything, then we'll be done. Does that make sense?

THE COURT: That's fair. And Mr. Derman, you may not -- you know, everything that you've done is on the record. I made a finding with regard to why I am issuing this as temporary restraints.

MR. DERMAN: Yes. Yes.

THE COURT: (Indiscernible) a return date, and again, Mr. Cousin, I'll wait to hear from you.

MR. COUSIN: Perfect. We appreciate that, Your Honor.

THE COURT: And just for the record, if you're going to file something, or you may or may not

file something, and I'll review it, and I'll consider it, and then I'll decide, is it -- does it -- does it change my clear and convincing view that this is a need to stay in place or not? And then it will be final. We'll do it (indiscernible).

MR. COUSIN: Your Honor, I really appreciate that. Okay? And thank you for your time --

THE COURT: But we're not going to -- hold on. I do appreciate your appreciation. But we're not going to -- because the part of the order that compels arbitration is saying that we're not coming back on any return date.

MR. DERMAN: No.

THE COURT: In fact, my secretary is going to send out a return date by e-mail, and that's going to be in the order. So this arbitration date, or this -- to compel arbitration is granted subject to the return date for the relief.

MR. DERMAN: We'd like -- if they're going to start now submitting, you know, obviously --

THE COURT: You have the right to -- you have the right to respond (indiscernible). But --

MR. DERMAN: (Indiscernible). I hope that's not necessary. I hope that they realize that there's no meaningful difference, and we can just go with Your

Honor's original indication.
THE COURT: I'll leave that to the parties. You all have clients to represent.
MR. DERMAN: All right. Thank you.
THE COURT: Thank you for your arguments today, again. Everybody is well represented, and I appreciate the professionalism. I was also, you know, the holidays (indiscernible) me too, so I was happy to give you the initial time.
MR. DERMAN: Thank you, Your Honor. Have a great weekend.
THE COURT: All right. Good luck.
MR. DERMAN: Thank you, Your Honor. Bye, bye.
(Proceeding concluded at 11:48:01 p.m.)

CERTIFICATION

I, TAMMY DeRISI, the assigned transcriber, do hereby certify the foregoing transcript of proceedings on CourtSmart, Index No. from 10:22:30 to 11:48:01, 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/ Tammy DeRisi — AD/T 518
Tammy DeRisi — AOC Number

KLJ Transcription Service — 01/12/2026
Agency Name — Date

EXHIBIT 3

2010 WL 2696695
Only the Westlaw citation is currently available.

UNPUBLISHED OPINION. CHECK COURT RULES BEFORE CITING.

Superior Court of New Jersey, Appellate Division.

IN THE MATTER OF THE ESTATE OF ANTHONY J. NAPOLEON

Argued March 17, 2010.
|
Decided July 7, 2010.

West KeySummary

1 **Injunction** Freezing or protecting assets pending litigation

That limited liability company (LLC) was seeking monetary relief from member's estate in LLC's action alleging that member had acted fraudulently, disloyally, or otherwise improperly by colluding with entities hired by LLC to construct office building did not preclude LLC from obtaining preliminary injunction prohibiting estate from distributing estate's assets. Estate was without liquid assets, and its other assets were in flux or subject to what could prove to be ruinous litigation.

On appeal from the Superior Court of New Jersey, Chancery Division, Probate Part, Ocean County, Docket No. C–158656.

Attorneys and Law Firms

Milagros Camacho argued the cause for appellant Anthony Napoleon, Jr. (Camacho Gardner & Associates, attorneys; Ms. Camacho, on the brief).

Ronald P. Colicchio, appellant, argued the cause pro se.

William J. Wolf argued the cause for respondents Brick Professional, L.L.C., Neil Sorrentino, Joseph Sorrentino and Andrew Lesko (Bathgate, Wegener & Wolf, attorneys; Mr. Wolf and Christopher B. Healy, on the brief).

Peter R. Strohm argued the cause for respon-dent Frank J. Dupignac, Jr. (Rothstein, Mandell, Strohm, Just & Halm, attorneys; Mr. Strohm, on the brief). Mark S. Anderson argued the cause for respondent Woolson Sutphen Anderson.

James J. Curry, Jr., respondent pro se.

Before Judges AXELRAD, FISHER and ESPINOSA.

Opinion

PER CURIAM.

***1** The estate's sole beneficiary, Anthony J. Napoleon, Jr. (Anthony), moved for leave to appeal an order that compelled the sale of a condominium unit owned by the estate; the order was intended to provide the illiquid estate with funds to address various obligations. We granted leave to appeal and consolidated the matter with an appeal filed by a former co-administrator seeking review of orders that enjoined disbursements and imposed sanctions. We affirm the orders regarding the sale of the condominium unit and affirm in part and reverse in part the orders concerning the injunction.

I

Anthony J. Napoleon (decedent) was murdered, along with Josephine O'Brien, at their home in Toms River on May 7, 2004. Decedent's Last Will and Testament left certain specific real estate and property interests to Josephine. Because Josephine was murdered at the same time, bequests made to her became part of the remainder, and that remainder, which decedent directed be placed in a credit-shelter trust, likely passed equally to Josephine's son, Peter O'Brien (O'Brien), and Anthony. O'Brien, however, was charged with the murder of both his mother and decedent, and later waived his interest in decedent's estate.[1] *See, e.g., N.J. Div. of Youth & Family Servs. v. M.W.,* 398 *N.J.Super.* 266, 298, 942 A.2d 1 (App.Div.2008); *Estate of Kalfas v. Kalfas,* 81 *N.J.Super.* 435, 437–39, 195 A.2d 903 (Ch.Div.1963). As a result, Anthony became the sole beneficiary of the estate.

The record reveals that the estate's administration has been fraught with inconstancy. William Moscatello, Esq., who was named in the Will as executor, qualified and held that position

for a while. However, he successfully petitioned for relief from that position on February 18, 2005. The judge handling the matter at the time replaced the executor with James J. Curry, Jr., Esq., over Anthony's objection; that appointment was followed by conflicts between Curry and Anthony.

In April 2006, Curry agreed to step aside in favor of Anthony, but the judge insisted an attorney act with Anthony and, as a result, on May 25, 2006, appointed Ronald P. Colicchio, Esq., and Anthony as co-administrators. Curry, however, with the consent of the substitute co-administrators, continued to represent the estate in other suits then and still pending.

By order entered on July 25, 2008, the judge discharged Colicchio and Anthony as substitute co-administrators; in their stead, the judge appointed Frank J. Dupignac, Jr., Esq. as successor substitute administrator. Dupignac continues to hold that office.

As can be seen, numerous attorneys have been involved in the administration of this estate to date. In addition, some of the attorney-administrators also retained their own counsel. And the record also reflects the occasional appearances of other attorneys whose involvement in this case we have no way of understanding from the record on appeal. Considerable attorneys' fees have been generated as a result.

***2** The record also provides an incomplete picture of the estate's assets and their current status. The estate has been involved in various lawsuits regarding assets or interests that decedent may or may not have held at the time of death. The record on appeal, however, does not contain certain pleadings or other relevant materials from these lawsuits, thereby precluding a complete understanding of their nature or impact on the administration of the estate. While the estate has been extensively involved in one suit in which it would appear to have no great interest,[2] the record also suggests a general disregard for decedent's Florida home, which has fallen into default and faces foreclosure.

The current substitute administrator has asserted that the estate has insufficient funds to bring the Florida mortgage current or to pay taxes or other obligations on two Hoboken condominium units. As summarized by the current administrator in a certification filed in the trial court:

> When turned over to me the [e]state account had a negative balance and the mortgage on the Florida home owned by the decedent was in default. There were judgments for [c]ourt ordered fees in excess of $500,000.00. The [e]state was involved in four separate law suits in two counties. There were condominium fees and real estate taxes due. While the [e]state had assets, it had no funds to meet those expenses.

In addition, despite these and other circumstances, the record reveals that Anthony has resided in one of the Hoboken condominium units without paying rent and, by occupying the unit, has prevented the estate from raising income through a rental to a third person.[3]

We, thus, examine the orders in question with the understanding that the estate, once with a gross estimated value of $2,517,434, as reflected in an estate tax return, has been troubled by numerous changes in representatives, plagued by the claims of attorneys for the payment of fees that seem to have been incurred at least in part without any ostensible benefit for the estate, and burdened by multiple lawsuits. And, despite the estate's lack of liquid assets, it appears that interim disbursements were made to the beneficiary. In short, the estate has assets but no cash; it has incurred a considerable amount of legal fees; and the lawsuits in which it has been immersed have yet to be concluded.

II

It is with these circumstances as a backdrop that we consider these consolidated appeals. The orders under review require that we examine (a) the judge's prohibition on certain distributions from the estate, and the sanctions imposed based on an alleged violation of that injunction, as to which Colicchio filed a notice of appeal; and (b) orders entered on July 29, 2009 and September 22, 2009, which authorized the administrator's sale of a condominium unit in Hoboken, as to which we granted leave to appeal.

A

The first group of orders under review relate to restraints imposed upon Colicchio and Anthony pursuant to a motion filed by Brick Professional, LLC (Brick), which is an entity that commenced a suit against the estate that awaits trial,[4] and the enforcement of those restraints. The first difficulty presented revolves around the fact that the judge rendered an oral decision on November 26, 2007, but did not memorialize

those restraints until entry of the June 10, 2008 order, which restrained the estate and its administrators from

> ***3** making any distribution of income, money or real or personal property for any purpose except for the payment of ... state taxes, federal taxes, real estate taxes for real property owned by the [e]state, premiums for insurance for property owned by the [e]state and premiums for bonds required by this [c]ourt or the [s]urrogate.
>
> That order also directed the filing of an accounting.

In what we assume was an informal accounting submitted in response to that order, Colicchio acknowledged that Anthony received from the estate—between the judge's oral decision of November 26, 2007 and the judge's order of June 10, 2008—disbursements in the amount of $28,267.[5] The accounting was never approved.

On September 21, 2009, the judge ordered Anthony to repay any funds received by him "in contravention of the restraints verbally entered ... on November 26, 2007."[6] That order also rendered Colicchio jointly liable with Anthony for the return of "any payment made to Anthony J. Napoleon, Jr., or others, in contravention of the restraints verbally entered by this [c]ourt on November 26, 2007 and memorialized in its [o]rder of June 10, 2008." The September 21, 2009 order did not state the amount to be returned and left the door open to other sanctions depending upon further proceedings following the submission of a certified accounting.

Colicchio appealed, and has presented the following arguments for our consideration:

> I. THE TRIAL COURT FAILED TO PROVIDE THE SPECIFICITY REQUIRED BY *RULE* 4:52–4 AS TO THE CONDUCT BEING ENJOINED IN ITS ORAL PROCLAMATION OF NOVEMBER 26, 2007.
>
> II. IT IS CLEAR ERROR TO RETROACTIVELY APPLY AN INJUNCTION AND TO IMPOSE SANCTIONS FOR VIOLATION OF SUCH INJUNCTION DURING THE TIME PERIOD THAT SAID INJUNCTION WAS NOT IN EFFECT.
>
> III. THE ISSUANCE OF AN INJUNCTION BY THE TRIAL COURT WAS NOT JUSTIFIED AS THE MOVANT WAS MERELY A CLAIMANT AGAINST THE ESTATE WHO SOUGHT MONEY DAMAGES, AND THE LEGAL CLAIMS CONTINUE TO BE HOTLY CONTESTED.
>
> IV. A HEARING SHOULD BE ORDERED ON ANY OUTSTANDING ACCOUNTING ISSUES DURING THE PERIOD WHEN I ACTED AS CO–ADMINISTRATOR OF THE ESTATE WITHOUT FURTHER DELAY.

Although we reject the argument in Point III that a person or entity who possesses a claim or holds a judgment against the estate cannot obtain injunctive relief in these circumstances, we agree with the argument contained in Point I that the November 26, 2007 oral decision lacked specificity or an apparent intent to restrain Colicchio or Anthony; as a result, the judge was mistaken in sanctioning Colicchio for making disbursements before entry of the June 10, 2008 order. That determination negates our need to discuss the arguments contained in Point II, and we find Point IV to have insufficient merit to warrant discussion in a written opinion. *R.* 2:11–3(e)(1)(E). We briefly explain.

First, we reject Colicchio's contention that because Brick ultimately seeks monetary relief from the estate that injunctive relief is not available. The argument that a litigant who seeks or may ultimately be entitled only to damages is not entitled to equitable relief because the litigant has a "remedy at law" is an oversimplification. The focus is not on whether there is a remedy at law but whether the litigant has "an *adequate* remedy at law." *See, e.g., Morris County Transfer Station v. Frank's Sanitation Serv., Inc.,* 260 *N.J.Super.* 570, 574, 617 A.2d 291 (App.Div.1992) (emphasis added). A party may not have an adequate remedy at law if monetary damages are difficult to quantify or is likely not to be available at the end of the day. *See, e.g., Steiner v. Stein,* 141 *N.J. Eq.* 478, 479–80, 58 A.2d 102 (Ch.1948). In such circumstances, a court may grant equitable relief in the form of an injunction or a decree of specific performance. *See Fleischer v. James Drug Stores, Inc.,* 1 *N.J.* 138, 146–47, 62 A.2d 383 (1948); *Houseman v. Dare,* 405 *N.J.Super.* 538, 542–43, 966 A.2d 24 (App.Div.2009); *see also First Nat'l State Bank of N.J. v. Commonwealth Fed. Sav. & Loan Ass'n,* 610 *F.*2d 164, 171 (3rd Cir.1979) (applying New Jersey law). We, thus, reject the argument that Brick's claim for money damages in its suit against the estate creates an insurmountable obstacle to preliminary injunctive relief. The current administrator has certified, and no one has disputed, that the estate is without liquid assets and its other assets are in flux or subject to what might prove to be ruinous litigation. In that circumstance, the court's authority to enter an interlocutory injunction restraining distributions is well-established. *See Beatty v. Wunschel,* 123 *N.J. Eq.* 192, 196 A. 456 (E. & A.1938); *In re Swetland's Estate,* 105 *N.J. Eq.*

603, 148 A. 744 (Prerog.Ct.1930). We, thus, conclude that the judge was authorized to restrain expenditures from the estate.[7]

***4** The next question concerns the effective date of the restraints. Brick argues the restraints went into effect when the judge delivered his oral decision on November 26, 2007; Colicchio argues no restraints were imposed until the judge entered an order on June 10, 2008. Although we agree, in general, with the premise of Brick Professional's argument—that the jural act may at times be a judge's oral pronouncement of judgment and not necessarily a later memorializing order, *see Community Realty Mgmt., Inc. v. Harris,* 155 *N.J.* 212, 228, 714 A.2d 282 (1998)—the judge's oral ruling on November 26, 2007 lacked the requisite specificity or sufficient imperative tone to make a reasonable person believe the restraints were put in effect at that moment.

In *Parker v. Parker,* 128 *N.J.Super.* 230, 232–33, 319 A.2d 750 (App.Div.1974), Judge (later Justice) Handler said for this court that when a judge expresses in an oral decision "a definitive adjudication of the controversy, reflecting its conclusive determination," the later entry of a written judgment "is essentially a non-discretionary act" that merely records what was previously imposed. The judge's oral ruling here lacks the qualities found important in *Parker* to warrant a conclusion that the restraints orally described became instantaneously effective. Indeed, no greater proof of the distinction between this case and *Parker* exists than the oral ruling itself.

The judge's November 26, 2007 oral decision found that restraints were appropriate and described them as not being "applicable, naturally, to taxes and also to ongoing carrying charges, insurance, taxes concerning the real estate." The judge found that Brick's attempts, through the filing of that motion, to "have access to whether or not [the estate] is retaining an expert or who's the expert" would not be appropriate, but the judge also held that "the overall reasonableness of any and all fees related to any such experts is something that can be subject and should be subject to the [c]ourt's ultimate review." In short, the judge did not clearly define what was and was not permitted.

That the judge recognized that he had not, in the oral decision, demarcated the expenditures that were or were not permitted is also revealed by the judge's later comments wherein he expressed that "[t]he intent and purpose of the [c]ourt's order" was to preserve the status quo "to the best extent possible," which would include "reasonable outlays" without restraining "any and all distributions." And, immediately after that comment, the judge said:

> Perhaps, with the [c]ourt's findings all counsel could work if you need to clarify the actual carrying charges. I'm not aware of what they are and what the status of the Estate assets are at this very moment.

The colloquy among the judge and counsel that followed demonstrated that the specific terms of the restraining order were yet to be declared but instead were to be hammered out by counsel and, if necessary, by the judge's later resolution of the form of the order.

***5** There is no doubt the judge intended in light of the estate's liquidity problems to restrain any unnecessary disbursements, but he recognized in rendering his oral decision that he was then unable to define the injunction's precise reach. In short, the judge revealed his intentions and provided an outline of what was to be restrained, but left it to counsel to provide clearer terms that would be included in a written order. As a result, the oral decision here was not "the definitive adjudication of the controversy," and did not express the "conclusive determination" required by *Parker, supra,* 128 *N.J.Super.* 232–33. We thus find it inappropriate to conclude that Colicchio would have clearly understood from the oral decision the precise actions that were prohibited and the date upon which that prohibition would take hold. *See, e.g., In re Educ. Assoc. of Passaic, Inc.,* 117 *N.J.Super.* 255, 262, 284 A.2d 374 (App.Div.1971) (holding that enforcement of an injunction requires that the violator know or have reason to know of the conduct prohibited), *certif. denied,* 60 *N.J.* 198 (1972).

For these reasons, we affirm the June 10, 2008 order and that part of the September 19, 2009 order that directed Colicchio to submit a more thorough accounting; we reverse that part of the September 19, 2009 order that imposed sanctions on Colicchio or rendered him liable for disbursements made between November 26, 2007 and June 10, 2008.

B

By order entered on July 29, 2009, the judge approved the current administrator's contract to sell one of the estate's condominium units in Hoboken for $628,000. That order also barred Anthony, or anyone acting on his behalf, from interfering with the sale.

The sale was permitted in order to infuse the estate with funds with which it could begin addressing its monetary obligations. An order entered on September 22, 2009 reiterated the confirmation of the sale and directed that, from the net proceeds, the administrator: satisfy a consent judgment[8]; pay the debts and obligations necessary to bring the Florida property out of default; and pay any other estate expenses referred to in an earlier order.[9] Otherwise, the September 22, 2009 order mandates that the net proceeds be held in trust by the administrator pending further order.

We granted Anthony's motion for leave to appeal these orders. In his brief, Anthony presents the following arguments for our consideration:

> I. IT WAS AN ABUSE OF DISCRETION FOR THE COURT BELOW TO HAVE APPROVED THE CONTRACT FOR THE SALE OF CONDO UNIT 12A BECAUSE THE PROPOSED SALES PRICE IS SUBSTANTIALLY LESS THAN THE WORTH OF THE PROPERTY AND THEREFORE DOES NOT BENEFIT THE ESTATE.
>
> II. AS THE SOLE BENEFICIARY, ANTHONY NAPOLEON, JR. HAD A RIGHT TO BE INVOLVED AND IT AS AN ABUSE OF DISCRETION FOR THE COURT BELOW TO HAVE THREATENED HIM WITH IMMEDIATE INCARCERATION AS PROVIDED FOR IN THE ORDER OF JULY 29, 2009.

We find no merit in these arguments.

Within Point I, Anthony appears to suggest we should review past orders approving fees sought by various attorneys. We share some concern about the unusually large amount of fees already approved in an estate that, until the appointment of the current administrator, seemed in so much disarray with at least one asset, a boat, being ignored, and another, the Florida home, being permitted to fall into arrears and in danger of foreclosure. Nevertheless, those fee orders are not presently before us; nor are they final orders. The trial judge, in his oral ruling of November 26, 2007, appears to have revealed to the attorney-claimants his intent to reexamine the propriety of their fees in the future: "[t]he reasonableness of those fees along with costs and counsel fees would be something to review in terms of an overall accounting submitted by the [e]state or an interim accounting submitted by the [e]state, and the [c]ourt should have the right to review any and all such submissions." Although not entirely clear on this point, we assume the judge has correctly determined that the prior fee awards are subject to additional review once a better understanding of the estate's assets and liabilities can be ascertained; that determination would likely have to await the conclusion of some or all the lawsuits in which the estate is engaged. Only then will the judge be presented with a true picture of whether any of these attorneys provided any benefit to the estate. Fees ostensibly incurred on behalf of the estate are subject to reduction or rejection based upon whether those fees have benefited the estate, *see, e.g., In re Bloomer,* 37 *N.J.Super.* 85, 91, 117 A.2d 17 (App.Div.1955), *certif. denied,* 23 *N.J.* 667, 130 A.2d 428 (1957); *In re Stone,* 21 *N.J.Super.* 117, 130–32, 91 A.2d 1 (Ch.Div.1952), and, of course, are only permitted to the extent they are reasonable, *see, e.g.,* Clapp & Black, *Wills and Administration,* 7A *New Jersey Practice* § 1547 at 97 (1984). We trust that at a more propitious time, the trial judge will, as he appears to intend, examine all the fees incurred before permitting payment in whole or in part, in order to determine whether any of the fees sought or previously awarded have benefited the estate,[10] and whether they are reasonable.

***6** More specifically, Anthony and others have made accusations regarding the propriety or reasonableness of fees in connection with the need to sell the condominium unit in question.[11] Anthony claims the judge abused his discretion in acceding to the administrator's desire to sell the property in order to provide needed cash to the estate because the sale would not have been necessary but for the numerous fee awards and requests.[12] We disagree.

The expansive authority of a personal representative over the estate's property cannot be doubted. *See N.J.S.A.* 3B:10–30 (declaring that "[u]ntil termination of his appointment a personal representative has the same power over the title to property of the estate that an absolute owner would have, in trust however, for the benefit of the creditors and others interested in the estate"); *N .J.S.A.* 3B:14–23(e)(2) (declaring that a fiduciary "shall, in the exercise of good faith and reasonable discretion, have the power ... [w]ith respect to any property or any interest therein owned by an estate or trust, including any real property belonging to the fiduciary's decedent at death, except where the property or any interest therein is specifically disposed of ... [t]o sell the property ...").

Although *N.J.S.A.* 3B:14–23(e)(2) renders the representative chargeable when the terms of the transaction are not "advantageous," the record here does not support Anthony's contention that the sale price of $628,000 is so unreasonably

low as to fit that description. Anthony refers us to an appraisal that suggests a value of the unit of $730,000. That conclusion, however, is contained in a report rendered on December 30, 2005, nearly four years before the date on which the judge made his ruling on this point. Even assuming this appraisal had probative value in light of its age and the intervening economic upheaval that has reduced property values, the appraisal was not even provided to the judge at the time he approved the sale on July 20, 2009; as a result, it can have no influence on our review of that determination. *See Triffin v. Am. Int'l Group, Inc.*, 372 *N.J.Super.* 517, 520, 859 A.2d 751 (App.Div.2004); *Cooper River Plaza East, LLC v. The Briad Group*, 359 *N.J.Super.* 518, 530, 820 A.2d 690 (App.Div.2003). Having failed to present sufficient evidence from which the judge could have determined that the agreement reached by the administrator with the unit's buyer was unreasonable, Anthony's argument on this point must fail.

Beyond his unsupported argument that the sales price obtained by the administrator was unreasonably low, which we reject, Anthony argues there was no justifiable need to sell the property because the outstanding fee awards are excessive or unwarranted.[13] Even if we were to agree that the trial court previously awarded fees that provided no benefit to the estate or were unreasonable in amount, we are nevertheless satisfied there is sufficient evidence of a need to liquidate some portion of the estate's assets, as the status of the Florida home reveals. The estate has a need for cash beyond any obligation it may have to pay any or all of the fees to which Anthony continues to object.

***7** We find insufficient merit in Point II to warrant discussion in a written opinion. *R.* 2:11–3(e)(1)(E).

III

To summarize, with regard to Colicchio's appeal, we affirm the June 10, 2008 order and also that part of the September 19, 2009 order that directed Colicchio to submit a more thorough accounting; we reverse that part of the September 19, 2009 order that imposed sanctions on Colicchio or rendered him liable for disbursements made between November 26, 2007 and June 10, 2008. With regard to Anthony's interlocutory appeal, we affirm the orders of July 29, 2009 and September 22, 2009.

In this court's order of October 13, 2009, which granted leave to appeal, we stayed "any other proceedings with regard to this estate, pending disposition of the appeal." That stay is hereby dissolved.

The matter is remanded for further proceedings in conformity with this opinion. We do not retain jurisdiction.

All Citations

Not Reported in A.2d, 2010 WL 2696695

Footnotes

1 O'Brien was convicted at his first trial, but his appeal resulted in the granting of a new trial. *State v. O'Brien*, 200 *N.J.* 520, 984 A.2d 879 (2009).

2 That suit, *Brick Professional, LLC v. Napoleon,* Docket No. OCN–L–946–05, seems to seek a declaration of any rights of ownership Anthony may have in a limited liability company in the wake of his father's death. Although we are told the estate was permitted to intervene in that action, it is not clear why the estate would have an interest in engaging in that litigation, particularly in light of the estate's lack of liquid assets.

3 The current administrator has asserted that Anthony frustrated a contract to sell one of the units by paying $10,000 to induce the purchaser to terminate the contract.

4 In *Brick Professional, LLC v. Estate of Anthony Napoleon,* Docket No. L–895–05, Brick alleged that decedent, who was a member of Brick, acted fraudulently, disloyally or otherwise improperly by colluding with entities hired by Brick to construct an office building.

5 This accounting was not included in any appendix.

6 The September 21, 2009 order acknowledged that Colicchio's law firm did not receive any payments from the estate between November 26, 2007 and June 10, 2008.

7 In so holding, we need not consider Brick's argument that *N.J .S.A.* 2C:41–4 empowered the judge to enjoin the estate from making expenditures. That argument rests in part on the sufficiency of Brick's RICO claim, a matter that has not been adequately illuminated here.

8 The record reveals that Andrew Lesko sued the estate. *Lesko v. Estate of Napoleon,* Docket No. L–2213–06. Shortly before trial, the parties settled, with the estate agreeing to pay $35,000 or, if it failed to do so within ninety days, to pay $40,000. A consent judgment memorializing that agreement was entered on December 15, 2008.

9 The September 22, 2009 order refers in this regard to paragraph 10 of the July 25, 2008 order, which authorized the payment of "ongoing carrying charges as to the real estate, real estate taxes and insurance costs, or any further inheritance tax or income tax payments due and owing."

10 Although as with many of these issues, the record on appeal does not provide sufficient illumination to permit more than a general comment, we observe a disturbing trend in this case to award fees ostensibly to be paid by the estate to attorneys retained by attorney-administrators not only for purposes perhaps related to the administration of the estate but also for the vindication of their own personal interests in the estate. For example, we note a provision of an order entered in this matter by another judge on April 6, 2006, which authorized "the attorneys currently representing the estate ... or [Anthony] shall be permitted to bill the estate for reasonable attorney's fees incurred *in the winding up of their representation of the estate or the individual Administrator CTA* " (emphasis added). It is difficult to imagine how such fees would be chargeable to the estate.

11 Although no particular fee order is yet before us, we are troubled that a prior administrator has attempted to justify the considerable size of his fees because he waived a right to a commission for having acted as the estate's personal representative. That is not a persuasive argument because the roster of administrators in this case would ultimately have to share in any commission due from this estate. *N.J.S.A.* 3B:18–4. What percentage, if any, of the overall commission to which this particular claimant would be entitled is presently indeterminable. In addition, any objection to the commission from the beneficiary would require an examination of the sufficiency of the work performed and the worth of "the actual pains, trouble and risk" undertaken by that claimant as an administrator. *N.J.S.A.* 3B:18–14. How the statutory commission should be awarded or divided, like the estate's overall obligation to pay attorneys' fees, cannot possibly be forecasted let alone determined at the present time. As a result, the reasonableness of a fee cannot be determined by reference to some waived commission at a time when the waived commission could not be quantified.

12 We pause to note that much of Anthony's argument in this point of his brief regarding the legitimacy or propriety of the fees heretofore awarded is made largely without reference to the record on appeal, contrary to *Rule* 2:6–2(a), which would further hamper our review of those contentions had the scope of these appeals required such an examination.

13 Anthony has also argued that the order permitting the sale should be set aside because he and not the estate is the owner. In this regard, he improperly asserts without citation to the record, *see Rule* 2:6–2(a), that his father gave him the deeds to the Hoboken condominium units prior to his death. He also failed to present this argument in the trial court. We, thus, reject this contention out of hand. *See Cooper River, supra,* 358 *N.J.Super.* at 530, 818 A.2d 455.

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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-00287-25

Civil Action

CERTIFICATION OF SARO HARTOUNIAN IN FURTHER SUPPORT OF PLAINTIFFS' APPLICATION FOR A PRELIMINARY INJUNCTION

SARO HARTOUNIAN, of full age, hereby certifies as follows:

1. I am a Member and Manager of Plaintiff Hyegate, LLC ("Hyegate"), and one of the individual Plaintiffs in the above-captioned matter. I am also the Chief Executive Officer of Harco Industries Inc. USA ("Harco"), a separate and discrete company unrelated to Hyegate, which I own and control together with my brother, Plaintiff Nareg Hartounian. In these capacities, I have personal knowledge of the facts set forth herein.

2. I submit this Certification in further support of Plaintiffs' application for injunctive relief and specifically in response to the certification submitted by Defendant Van Z. Krikorian ("Defendant" and "Defendant's Certification"). While I dispute many of the statements and mischaracterizations set forth in Defendant's Certification, the purpose of this

Certification is to clarify the record with respect to the pending application for injunctive relief. I expressly reserve all rights to further dispute Defendant's statements and claims in the appropriate forum at the appropriate time.

3. Exhibit 1 to Defendant's Certification consists of a list of the outstanding liabilities of Aragats Perlite OJSC ("AP") as of approximately October 2025. I created this document—which consists of confidential, sensitive AP financial information and lists AP's liabilities—at the demand of Defendant in or around October 2025 in connection with Defendant's efforts to purchase AP. As Defendant well knew, my brother Nareg served as General Manager for AP from 2019 to 2024, and for the majority of his tenure, he took no salary, and what little he was paid, he contributed that amount back to the business for cash flow purposes. Because Defendant was incredibly demanding with respect to all potential liabilities of AP, I informed him that the issue of Nareg's lack of compensation was a potential liability—but that Nareg would be willing to forego that compensation should an amicable agreement be reached with respect to Defendant's effort to purchase AP. Defendant insisted I include the total amount owed to Nareg. Defendant's insinuation that there was some unknown or unapproved "phantom payment" due to Nareg is false. Indeed, Defendant was well aware that Nareg was uncompensated and "agree[d]" "100%" that Nareg should be drawing salary from AP for his efforts as General Manager. Attached to my Certification as **Exhibit 1** is a true and accurate copy of a May 17, 2021 email exchange among Defendant, Nareg, and myself confirming this.

4. Defendant's claim in Paragraphs 24 through 27 of Defendant's Certification that he was unaware of loans made by Harco to Hyegate is categorically false. As set forth in the Verified Complaint, AP was kept afloat during the entire relevant time frame largely by loans from my and Nareg's separate and discrete company Harco—and not a dime from Defendant.

He was aware of every loan made by Harco to Hyegate/AP, indeed, often himself originated requests for infusions of funds into AP, all of which he knew were coming from Harco.

5. Similarly, while I dispute the amount of the loan to which Defendant refers in Paragraph 50 of Defendant's Certification, the fact is that while he may have provided a guarantee for that loan, he has never paid a dime towards it. The loan is in good standing and all payments towards it have been made by AP (funded by Harco). Moreover, in or about 2021, Nareg, as General Manager of AP, was able to renegotiate the loan, moving it to a different bank with a more favorable interest rate. Defendant's guarantee was extinguished as a result and has not existed since that date.

6. As set forth extensively in the Verified Complaint, in the fall of 2025—at the time Defendant was trying to purchase the company—Nareg, my counsel, and I made repeated requests to Defendant that he cease purporting to act on behalf of AP. His actions and statements were causing significant harm to the company, and because Nareg and I collectively hold two-thirds of the membership interests in Hyegate (and therefore control its subsidiary AP), we did not agree with the course of action he was taking. As set forth in the Verified Complaint, Defendant refused to comply with this request. As a result, and pursuant to the terms of its Operating Agreement, Hyegate called a special meeting of the Members on November 20, 2025 (the "Special Meeting"). Defendant refused to attend this Special Meeting, at which the Resolutions attached as Exhibit W to the Verified Complaint were issued. Contrary to the allegations in Defendant's Certification, my counsel Mr. Derman did not attend—let alone conduct—the Special Meeting. The only attendees at that meeting were Nareg and myself (as Defendant refused to attend). Mr. Derman merely provided the Zoom link for the meeting—again, he did not attend it.

7. As noted, the remainder of Defendant's lengthy Certification consists of unfounded allegations attacking my and Nareg's character, or concerning the operations of AP. For the clarity of the record, I reserve the right to contest those assertions and will address Defendant's false statements at the appropriate time and in the appropriate forum. The within Certification is submitted in connection with the discrete issue before the Court at this time—Plaintiffs' application for injunctive relief restraining Defendant from: (i) taking unilateral action on behalf of Hyegate and its subsidiaries; (ii) publicizing or disseminating to third-parties any confidential information of Hyegate or its subsidiaries; (iii) taking any action adverse to the business interests of Hyegate and its subsidiaries; and (iv) taking any action that would violate Hyegate's Operating Agreement, or the governing documents of any of its subsidiaries.

I hereby certify that the above statements made by me are true. I am aware that if any of the above statements made by me are willfully false I am subject to punishment.

Dated: January 28, 2026

SARO HARTOUNIAN

EXHIBIT 1

From: Van Krikorian <vkrikorian@harcoweb.com>
Date: May 17, 2021 at 8:17:37 PM GMT+4
To: Nareg AP <nareg@aragatsperlite.am>, Saro Hartounian <saro@harcoweb.com>
Subject: Re: Nareg AP Salary

I agree with Saro 100% - not an issue

From: Nareg AP <nareg@aragatsperlite.am>
Sent: Monday, May 17, 2021 11:42 AM
To: Saro Hartounian <saro@harcoweb.com>
Cc: Van Krikorian <vkrikorian@harcoweb.com>
Subject: Re: Nareg AP Salary

Hi
I'm not sure where Van stands with this ,
When I brought it up during our meeting , he didn't say anything.

Նարեկ Հարթունյան

Տնօրեն
Nareg Harounian
general director

www.aragatsperlite.am

Cell: +374 93 822 852
Address: 90/8 Araratyan str.,
0043, Yerevan, RA

On May 17, 2021, at 6:30 PM, Saro Hartounian <saro@harcoweb.com> wrote:

HI Nareg,

I know this was brought up during out meeting last week, but not concluded.

Certainly, we'd agreed you should be drawing salary from AP. This was decided last year.

Please determine backward wages, and initiate reimbursement as well as getting on the books with a salary commensurate with your position.

Thanks

Saro

Saro Hartounian | CEO
HARCO INCENTIVES | 333 S. Van Brunt St. | Englewood, NJ 07631
Direct 201-681-9192 | E: saro@harcoweb.com

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Attorneys for Plaintiffs 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-00287-25 Civil Action **CERTIFICATION OF NAREG HARTOUNIAN IN FURTHER SUPPORT OF PLAINTIFFS' APPLICATION FOR A PRELIMINARY INJUNCTION**

NAREG HARTOUNIAN, of full age, hereby certifies as follows:

1. I a Member and Manager of Plaintiff Hyegate, LLC ("Hyegate"), the former General Manager of Hyegate's subsidiary Aragats Perlite OJSC ("AP") from 2019 to 2024, and one of the individual Plaintiffs in the above-captioned matter. I am also the Chief Operating Officer of Harco Industries Inc. USA, a separate and discrete company unrelated to Hyegate, which I own and control together with my brother, Plaintiff Saro Hartounian. In these capacities, I have personal knowledge of the facts set forth herein.

2. I submit this Certification in further support of Plaintiffs' application for injunctive relief and specifically in response to the certification submitted by Defendant Van Z. Krikorian ("Defendant" and "Defendant's Certification"). While I dispute many of the

statements and mischaracterizations set forth in Defendant's Certification, the purpose of this Certification is to clarify the record with respect to the pending application for injunctive relief. I expressly reserve all rights to further dispute Defendant's statements and claims in the appropriate forum at the appropriate time.

3. The document attached to the Verified Complaint as Exhibit DD, which Defendant disseminated, is an internal AP document generated weekly and containing confidential, non-public business information. This includes AP's weekly sales figures, accounts-payable details, sales and production data, the identities of AP's customers in Dubai and Europe, and AP's banking information, including bank balances and outstanding loans. Under Hyegate's Operating Agreement, this information falls squarely within the definition of "Confidential Information." Disclosure of this material to AP's other customers is harmful to AP and, by extension, Hyegate, because it provides competitors and customers with insight into AP's financial condition, pricing, and operational capacity—information that has already been used as leverage against AP since being disseminated by Defendant. Contrary to Defendant's Certification, none of this information is disclosed to Customs, included in mining reports, or available from any other public source.

4. Defendant's Certification alleges that I was subject to criminal charges in Armenia for tax evasion. That allegation is entirely misleading and calculated merely to attack my reputation and character. While the facts of that 2011 matter are not at all relevant to the present dispute, I was not an Armenian citizen at the time, had no earnings in Armenia, and did not commit "tax evasion." The false and pretextual charges were brought against me by adverse persons and entities seeking to corruptly take possession of certain properties and assets owned

by Saro and me in Armenia. In connection with those charges, I was unjustly jailed for four days, as a pressure tactic to seize the assets, but then released, and the charges were ultimately dropped.

5. I have never been involved in the "criminal investigation" referenced by Defendant in his certification and reflected in Exhibit 2 to Defendant's Certification, in any capacity. As noted, the document attached as Exhibit 2 to Defendant's Certification is not a charging document but rather an administrative conclusion. It is not evidence of a criminal case against anyone and neither names nor identifies me in any way.

6. Contrary to Defendant's Certification, there is no executed Armenian version of the document attached to the Verified Complaint as Exhibit Z. That document, drafted by Defendant in English and executed by all parties in English, reflects only a preliminary understanding between AP and APR. This document was simply an agreement to agree at some future time, and explicitly stated that APR's "exclusive territory should include Germany and Austria for two years from the date of this Agreement. Details of the exclusive distribution will be agreed to by the Parties in a separate agreement." No such future agreement was ever executed.

7. I never signed the document attached as Exhibit E to the Verified Complaint. My signature appearing on that document was cut and pasted from some other document, making the document allegedly bearing my signature a forgery.

8. As noted, the remainder of Defendant's lengthy Certification consists of unfounded allegations attacking my and Saro's character, or concerning the operations of AP. For the clarity of the record, I reserve the right to contest those assertions and will address Defendant's false statements at the appropriate time and in the appropriate forum. The within Certification is submitted in connection with the discrete issue before the Court at this time—

Plaintiffs' application for injunctive relief restraining Defendant from: (i) taking unilateral action on behalf of Hyegate and its subsidiaries; (ii) publicizing or disseminating to third-parties any confidential information of Hyegate or its subsidiaries; (iii) taking any action adverse to the business interests of Hyegate and its subsidiaries; and (iv) taking any action that would violate Hyegate's Operating Agreement, or the governing documents of any of its subsidiaries.

I hereby certify that the above statements made by me are true. I am aware that if any of the above statements made by me are willfully false I am subject to punishment.

Dated: 1/28/2026

NAREG HARTOUNIAN