

## **APPENDIX**

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APPENDIX A

S.D.N.Y. – N.Y.C.  
22-cv-10443  
Cronan, J.

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

No. 25-3091

Houssam Eddine Hamrit,  
*Plaintiff-Appellant,*

v.

Citigroup Global Markets, Inc. et al.,  
*Defendants-Appellees.*

Filed July 9, 2026

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 9th day of July, two thousand twenty-six.

Present:

Richard J. Sullivan,  
Michael H. Park,  
Alison J. Nathan,  
*Circuit Judges.*

Appellant, proceeding pro se, moves to supplement the record and to hold briefing in abeyance pending

resolution of the motion. Appellees move to dismiss in part for lack of appellate jurisdiction.

Upon due consideration, it is hereby ORDERED that the Appellees' motion is GRANTED, and the appeal is DISMISSED in part as to Appellant's challenge to orders entered before the dismissal for failure to prosecute. See *Marquez v. Silver*, 96 F.4th 579, 582–83 (2d Cir. 2024); *Martens v. Thomann*, 273 F.3d 159, 183 (2d Cir. 2001). It is further ORDERED that the balance of the appeal is DISMISSED because it “lacks an arguable basis either in law or in fact.” *Neitzke v. Williams*, 490 U.S. 319, 325 (1989); see *Pillay v. INS*, 45 F.3d 14, 17 (2d Cir. 1995). It is further ORDERED that Appellant's motions are DENIED as moot.

FOR THE COURT:

Catherine O'Hagan Wolfe, Clerk  
of Court

APPENDIX B

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

Docket No: 25-3091  
HOUSSAM EDDINE HAMRIT,  
*Plaintiff - Appellant,*

v.

CITIGROUP GLOBAL MARKETS, INC., CITI  
PERSONAL WEALTH MANAGEMENT,  
CITIGROUP, INC.,  
*Defendants - Appellees.*

ORDER

Filed August 14, 2026

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 14th day of August, two thousand twenty-six.

Appellant, Houssam Eddine Hamrit, filed a motion for panel reconsideration, or, in the alternative, for reconsideration *en banc*. The panel that determined the appeal has considered the request for reconsideration, and the active members of the Court have considered the request for reconsideration *en banc*.

IT IS HEREBY ORDERED that the motion is denied.

FOR THE COURT:  
Catherine O'Hagan Wolfe, Clerk

## APPENDIX C

### UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

22 Civ. 10443 (JPC)

HOUSSAM EDDINE HAMRIT,  
*Plaintiff,*

-v-

CITIGROUP GLOBAL MARKETS, INC., *et al.*,  
*Defendants.*

#### OPINION AND ORDER

Filed December 8, 2025

JOHN P. CRONAN, United States District Judge:

On June 30, 2025, the Court ordered Plaintiff Houssam Eddine Hamrit to show cause why this case should not be dismissed with prejudice for failure to prosecute under Federal Rule of Civil Procedure 41(b) following his refusal to commence arbitration in defiance of multiple Court orders. Dkt. 150 ("Order"). Plaintiff, proceeding *pro se*, responded to that Order on July 11, 2025, making clear that he does not intend to commence arbitration. Dkt. 151 ("Response"). For the following reasons, the Court dismisses this action with prejudice.

#### **I. Background**

The Court assumes the parties' familiarity with the background of this dispute as outlined in its March 26, 2024 Opinion and Order on the motion to compel arbitration brought by Defendants Citigroup Global Markets, Inc., Citi Personal Wealth

Management, and Citigroup, Inc. (collectively, "Citigroup"). See *Hamrit v. Citigroup Glob. Mkts., Inc.*, No. 22 Civ. 10443 (JPC), 2024 WL 1312254, at \*1-3 (S.D.N.Y. Mar. 26, 2024). In that Opinion and Order, the Court held Defendants' motion in abeyance pending a bench trial on the limited issue of whether the parties had entered a binding agreement to arbitrate. *Id.* at \*9. On April 22, 2025, after that bench trial, the Court concluded that the parties had entered into a valid and enforceable arbitration agreement, granted Citigroup's motion to compel, ordered the parties to commence arbitration before the Financial Industry Regulatory Authority ("FINRA") by June 23, 2025, and stayed this action pending the arbitration's completion. *Hamrit v. Citigroup Glob. Mkts., Inc.*, No. 22 Civ. 10443 (JPC), 2025 WL 1191014, at \*14 (S.D.N.Y. Apr. 22, 2025).

Plaintiff has since made several attempts to appeal or stay this Court's order compelling arbitration because, he asserts, he cannot commence arbitration while maintaining his litigation position that he had never entered into an arbitration agreement. Response at 9. First, on April 30, 2025, Plaintiff filed a notice of interlocutory appeal (his second in this case) of several of the Court's rulings, including on the motion to compel arbitration. Dkt. 123. For various reasons, including that those rulings were not final judgments and the Federal Arbitration Act ("FAA") specifically provides that an order granting a motion to compel arbitration is not immediately appealable, see 9 U.S.C. § 16(b)(2), this Court certified on May 1, 2025, that Plaintiff's notice of interlocutory appeal was "frivolous and legally ineffective to divest the Court of its jurisdiction over this case." Dkt. 124 at 2. On June 25, 2025, the United

States Court of Appeals for the Second Circuit dismissed Plaintiff's April 30 interlocutory appeal for lack of jurisdiction "because an order compelling arbitration is nonfinal." Dkt. 152 at 1.

Similarly, on May 7, 2025, Plaintiff moved this Court to stay its order compelling arbitration so that he could pursue an interlocutory appeal of several of the Court's decisions in this case, including its ruling on the motion to compel arbitration. Dkt. 126. On May 12, 2025, the Court denied that motion because, as the Court had previously advised Plaintiff, the FAA "specifically provides that an order granting a motion to compel arbitration is not immediately appealable," Dkt. 131 at 2 (citing 9 U.S.C. § 16(b)(2)), so Plaintiff had not shown a likelihood of success in his interlocutory appeal, nor a risk that the arbitration would irreparably harm him. *Id.*

Plaintiff refused to begin the FINRA arbitration process by the June 23, 2025 deadline. *See* Dkt. 139 (June 23, 2025 letter from Plaintiff). The next day, the Court *sua sponte* extended that deadline to initiate arbitration to June 27, 2025, and warned Plaintiff that if he again disregarded the deadline, "the Court will order him to show cause why sanctions, including dismissal of this action with prejudice, should not be imposed for failure to comply with the Court's orders and/or failure to prosecute." Dkt. 142. On June 27, 2025, Plaintiff informed the Court in two letters, Dkts. 145, 147, that he would not initiate arbitration because he "never signed an arbitration agreement with the Defendants," and without such agreement, "there is no legal basis to proceed before FINRA." Dkt. 147. He asked the Court to "enter a final judgment so that [he] may pursue [an] appeal" of its rulings. *Id.* In response, the Court again

warned Plaintiff that his continued refusal to commence arbitration would prompt the Court to order him to show cause why this case should not be dismissed with prejudice. Dkt. 148. On June 30, 2025, the parties submitted a letter stating that Plaintiff still had not initiated arbitration and that Plaintiff has “no present intention to do so.” Dkt. 149 (“Joint Letter”) at 1. That same day, the Court ordered Plaintiff to show cause why the case should not be dismissed with prejudice for failure to prosecute under Federal Rule of Civil Procedure 41(b). *See* Order at 3. Plaintiff filed his response on July 11, 2025. Dkt. 151.

## II. Legal Standard

Rule 41(b) of the Federal Rules of Civil Procedure authorizes a district court to dismiss an action, on motion or *sua sponte*, when a plaintiff fails to prosecute the case or fails to comply with court orders. *LeSane v. Hall’s Sec. Analyst, Inc.*, 239 F.3d 206, 209 (2d Cir. 2001); *see Shetiwy v. Midland Credit Mgmt.*, No. 12 Civ. 7068 (RJS), 2016 WL 4030488, at \*1 (S.D.N.Y. July 25, 2016), *aff’d*, 706 F. App’x 30 (2d Cir. 2017) (summary order). Given that dismissal is a “harsh remedy . . . appropriate only in extreme situations,” *Lucas v. Miles*, 84 F.3d 532, 535 (2d Cir. 1996), courts analyze five factors that “significantly cabin a district court’s discretion under Rule 41(b).” *LeSane*, 239 F.3d at 209. They are:

- (1) the duration of the plaintiff’s failures,
- (2) whether plaintiff had received notice that further delays would result in dismissal,
- (3) whether the defendant is likely to be prejudiced by further delay,
- (4) . . . the balance between alleviating court calendar congestion and protecting

a party's right to due process and a fair chance to be heard and (5) . . . the efficacy of lesser sanctions.

*Id.* (citation modified). "Generally, no one factor is dispositive." *Shetiwy*, 2016 WL 4030488, at \*2 (quoting *Martens v. Thomann*, 273 F.3d 159, 180 (2d Cir. 2001)). *Pro se* plaintiffs are afforded "special leniency regarding procedural deficiencies," so their complaints should be dismissed "only when the circumstances are sufficiently extreme." *LeSane*, 239 F.3d at 209 (citation modified).

### III. Discussion

The factors listed above weigh in favor of dismissal. "Sister courts in this District have dismissed cases with prejudice under [Rule 41(b)] where, despite a court order, a Plaintiff failed to commence arbitration and demonstrated no intent to initiate arbitration." *Occilien v. Related Partners, Inc.*, No. 19 Civ. 7634 (KPF), 2021 WL 3727275, at \*1 (S.D.N.Y. Aug. 23, 2021). That describes precisely Plaintiff's position here.

Plaintiff concedes that the Court has given him "clear warnings that failure to initiate arbitration could result in dismissal." Response at 6 (citations omitted). Indeed, the Court advised Plaintiff on June 24, June 27, and June 30, 2025, that his failure to commence arbitration by the deadline set would result in an order to show cause why the Court should not dismiss this action with prejudice. Dkts. 142, 148, 150. Plaintiff has nevertheless resisted arbitration since the Court's April 22, 2025 Order compelling arbitration. *See Hamrit*, 2025 WL 1191014, at \*14. He did not relent after this Court denied his motion to stay arbitration, Dkt. 131, and the Second Circuit dismissed his interlocutory appeal, Dkt. 152. When

the June 23, 2025 deadline passed, the Court gave Plaintiff an additional chance to initiate arbitration by June 27. But on June 30, 2025, Plaintiff stated that he had “no present intention to do so.” Joint Letter at 1. Plaintiff maintains that position today. See Response at 1. It now has been about seven-and-a-half months since the Court’s order compelling arbitration, and about five-and-a-half months since the deadline to commence arbitration. Plaintiff’s intransigence has caused more than a “brief delay” in proceedings, *id.* at 6, 9, and has lasted long enough to justify dismissal. See *Ruzsa v. Rubenstein & Sendy Att’ys at L.*, 520 F.3d 176, 177 (2d Cir. 2008) (per curiam) (finding seven months is a “delay of significant duration”); *Lyell Theatre Corp. v. Loews Corp.*, 682 F.2d 37, 42-43 (2d Cir. 1982) (observing that delays of “merely a matter of months” may support dismissal). The first two factors—the duration of the delay and whether the plaintiff received notice that further delay would result in dismissal—thus weigh heavily in favor of dismissal.

The fourth and fifth factors also militate in favor of dismissal. As to the fourth factor, Plaintiff’s interest in a fair chance to be heard has been satisfied to the fullest extent possible, so that interest is outweighed by the burden he imposes on the Court’s docket. Plaintiff has used every available opportunity to be heard up to this point. The Court considered his arguments against arbitration when evaluating Citigroup’s motion to compel arbitration on the papers, the Court conducted a bench trial at which Plaintiff testified and the parties otherwise presented evidence as to whether they entered into a valid arbitration agreement, and the Court again considered Plaintiff’s arguments seeking a stay of its

order compelling arbitration. And that is not all—Plaintiff would have even more chances to be heard after any arbitration. As the Court has explained for Plaintiff's benefit, commencing arbitration would not eliminate his ability to challenge this Court's prior rulings. See Order at 2 n.1. He simply would need to wait until after the arbitration concludes and the Court considers any arbitral award's enforcement. *Id.* (citing *Steele v. L.F. Rothschild & Co., Inc.*, 864 F.2d 1, 3 (2d Cir. 1988)); see also *Pierno v. Fidelity Brokerage Servs., LLC*, No. 20-3711-cv, 2021 WL 5986763, at \*3 (2d Cir. Dec. 16, 2021) (summary order) (noting that the plaintiff “could have secured his ‘day in court’ if he had initiated arbitration proceedings”). But Plaintiff evidently has decided not to allow the parties and the Court to reach that stage. He thus leaves the Court no option but to dismiss the action.

As to the fifth factor, no other sanction short of dismissal with prejudice would suffice given Plaintiff's plain refusal to begin arbitration. See *Dhaliwal v. Mallinckrodt PLC*, No. 18 Civ. 3146 (VSB), 2020 WL 5236942, at \*2 (Sept. 2, 2020) (finding that “lesser sanctions, including monetary sanctions, would not be adequate to compel arbitration” (quoting *Shetiwy*, 2016 WL 4030488, at \*3)). Plaintiff asks the Court to consider dismissing without prejudice or entering “final judgment compelling arbitration.” Response at 7. Neither is a viable alternative to dismissal with prejudice. When a plaintiff in a stayed case commits, in defiance of judicial orders, to refusing to initiate arbitration, sanctions lesser than dismissal with prejudice are ineffective. See *Pierno*, 2021 WL 5986763, at \*3 (“Given Pierno's refusal to begin arbitration—which he stated to the district court multiple times—it is not clear what ‘efficacy’ lesser

sanctions would have had.”). Dismissal without prejudice would be futile because, should Plaintiff refile his claim in federal court, the parties likely would find themselves right back to where they currently are. Nor is Plaintiff’s other proposal—“entry of final judgment compelling arbitration”—an option. See Response at 7. The Second Circuit has held that under Section 3 of the FAA, 9 U.S.C. § 3, “a stay of proceedings [is] necessary after all claims have been referred to arbitration and a stay requested.” *Katz v. Cellco P’ship*, 794 F.3d 341, 345 (2d Cir. 2015); accord *Smith v. Spizzirri*, 601 U.S. 472, 478 (2024); see Dkt. 23 (Citigroup’s memorandum of law for its motion to compel) at 10 (arguing that “the Court should stay these proceedings pending arbitration”); see also *Ligeri v. Amazon.com, Inc.*, No. 24-2337, 2025 WL 711544, at \*1 (2d Cir. Feb. 13, 2025) (per curiam) (stating that a “district court’s order compelling arbitration and staying the action is not a final order under 28 U.S.C. § 1291”).

Finally, going back to the third factor, further delay—in addition to serving no purpose for reasons indicated above—would presumptively prejudice Citigroup. “Prejudice may be presumed as a matter of law in certain cases, but the issue turns on the degree to which the delay was lengthy and inexcusable.” *United States ex rel. Drake v. Norden Sys., Inc.*, 375 F.3d 248, 256 (2d Cir. 2004) (citing *Lyell Theatre Corp.*, 682 F.2d at 43); accord *Shannon v. Gen. Elec. Co.*, 186 F.3d 186, 195 (2d Cir. 1999) (Sotomayor, J.) (explaining why unreasonable delay presumptively prejudices defendants). Meanwhile, “the need to show actual prejudice is proportionately greater” where “delay is more moderate or excusable.” *Drake*, 375 F.3d at 256 (citation modified). Plaintiff’s delay is

lengthy, unreasonable, and inexcusable, triggering a presumption of prejudice. *See id.* at 257 (explaining that when prejudice is presumed, there is “a rebuttable presumption” of prejudice). While it may seem “minimal” to Plaintiff, Response at 5-6, it has been unnecessarily long and follows a nearly two-year process to resolve Citigroup’s motion to compel arbitration, which was filed on May 1, 2023, Dkt. 20. Plaintiff has made no showing to rebut this presumption of prejudice. Though the case has been stayed since April 22, 2025, he is mistaken that Citigroup has “incurred no litigation costs during this period.” Response at 6. Citigroup has filed numerous letters since the case was stayed, *see* Dkts. 127, 135, 138, 140, 146, and, more generally, must dedicate resources to monitoring this litigation. Moreover, even were Plaintiff able to demonstrate that further delay would not prejudice Citigroup, that showing alone would not outweigh the other four factors, which overwhelmingly weigh in favor of dismissal with prejudice.

#### **IV. Conclusion**

Dismissal with prejudice is the only way around the impasse that Plaintiff has created. A plaintiff cannot maintain a lawsuit in perpetuity by resisting an order compelling arbitration. The Court therefore dismisses this action with prejudice. The Clerk of Court is respectfully directed to lift the stay in this case, to enter judgment for Citigroup, and to close the case.

SO ORDERED.

Dated: December 8, 2025  
New York, New York

/s/ John P. Cronan  
JOHN P. CRONAN  
United States District Judge

**APPENDIX D**

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

22 CIVIL 10443 (JPC)

**HOUSSAM EDDINE HAMRIT,**  
*Plaintiff,*  
-against-  
**CITIGROUP GLOBAL MARKETS, INC., et al.,**  
*Defendants.*

**JUDGMENT**

Filed December 9, 2025

It is hereby **ORDERED, ADJUDGED AND DECREED:** That for the reasons stated in the Court's Opinion and Order dated December 8, 2025, dismissal with prejudice is the only way around the impasse that Plaintiff has created. A plaintiff cannot maintain a lawsuit in perpetuity by resisting an order compelling arbitration. The Court has therefore dismissed this action with prejudice. Judgment is entered for Citigroup; accordingly, the case is closed.

Dated: New York, New York  
December 9, 2025

**TAMMI M. HELLWIG**  
Clerk of Court  
BY: /s/ K. Mango  
Deputy Clerk

APPENDIX E

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

22 CV 10443 (JPC)

HOUSSAM EDDINE HAMRIT,  
*Plaintiff,*  
-against-  
CITIGROUP GLOBAL MARKETS, INC., CITI  
PERSONAL WEALTH MANAGEMENT,  
CITIGROUP, INC.,  
*Defendants.*

NOTICE OF APPEAL  
Filed December 8, 2025

Notice is hereby given that the following parties: Houssam Eddine Hamrit, Plaintiff, Pro Se in the above-named case appeal to the United States Court of Appeals for the Second Circuit from the [X] judgment [X] orders entered on: December 8, 2025 (ECF No. 154); April 22, 2025 (ECF No. 121); July 22, 2024 (ECF No. 69) & August 05, 2024 (ECF No. 76); and November 26, 2024 (ECF No. 106) that: I, Houssam Eddine Hamrit, the pro se Plaintiff in the above-captioned matter, hereby appeal to the United States Court of Appeals for the Second Circuit from the Opinion and Order entered on December 8, 2025 (ECF No. 154), which dismissed this action with prejudice under Federal Rule of Civil Procedure 41(b).

This appeal includes, and is intended to secure review of, all prior orders that merge into the final judgment, including but not limited to:

- Opinion and Order entered April 22, 2025 (ECF No. 121), granting Defendants' motion to compel arbitration and staying this action;
- Opinion and Order entered November 26, 2024 (ECF No. 106), excluding the testimony of Plaintiff's expert witness, Larry Stewart;
- Order entered July 22, 2024 (ECF No. 69), limiting discovery; and
- Order entered August 5, 2024 (ECF No. 76), denying Plaintiff's motion for reconsideration of the July 22, 2024 discovery ruling.

This appeal is taken pursuant to 28 U.S.C. § 1291 and 1331; the Federal Arbitration Act, 9 U.S.C. § 16; the United States Constitution; and all other relevant provisions of federal law.

Dated: December 8, 2025

/s/ Houssam Eddine Hamrit  
Hamrit, Houssam Eddine  
717 D St NW, Ste #300  
Washington, DC 20004  
202-600-6309  
houssam.hamrit@gmail.com

[Form field labels and instructions omitted.]

## APPENDIX F

### UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Case No: 25-3091

HOUSSAM EDDINE HAMRIT,  
*Plaintiff-Appellant,*  
- against -  
CITIGROUP GLOBAL MARKETS, INC., CITI  
PERSONAL WEALTH MANAGEMENT, and  
CITIGROUP, INC.,  
*Defendants-Appellees.*

DECLARATION OF BRUCE S. GOODMAN IN  
OPPOSITION TO APPELLANT'S MOTION FOR  
ADMINISTRATIVE ORDER AND IN SUPPORT OF  
MOTION TO PARTIALLY DISMISS APPEAL  
Filed March 16, 2026 (2d Cir. Dkt. 25.1)  
(*Excerpts*)

BRUCE S. GOODMAN, pursuant to 28 U.S.C. § 1746,  
states the following:

1. I am a member of Zeichner Ellman & Krause  
LLP, attorneys for defendants-appellees Citigroup  
Global Markets, Inc., Citi Personal Wealth  
Management, and Citigroup, Inc. (collectively,  
"Citigroup")

2. I make this declaration:

(a) in opposition to plaintiff-appellant  
Houssam Eddine Hamrit's ("Plaintiff")  
motion for an administrative order  
directing that certain bench-trial

exhibits and the trial transcript be included in the Record, and

(b) in support of Citigroup's motion for an Order dismissing Plaintiff's improper appeal from (i) the interlocutory Findings of Fact and Conclusions of Law dated April 22, 2025, by which the United States District Court for the Southern District of New York (Cronan, J.) (the "District Court") granted Citigroup's motion to compel Plaintiff to arbitrate his claims pursuant to the arbitration agreement contained in the contract governing the brokerage account that is the subject of this action (the "Compel Arbitration Order") (Hamrit Declaration, Exhibit B), (ii) the interlocutory Opinion and Order dated November 26, 2024, granting Citigroup's motion *in limine* excluding the testimony of Plaintiff's proffered expert witness Larry F. Stewart (the "Expert Exclusion Order") (attached as Exhibit A), (iii) the interlocutory Memo Endorsement Order dated July 22, 2024, denying in part Plaintiff's discovery motion (the "Discovery Order") (attached as Exhibit B), and (iv) the interlocutory Memo Endorsement Order dated August 5, 2024, denying Plaintiff's motion for reconsideration of the Discovery Order (the "Discovery Reconsideration Order") (attached as Exhibit C) (collectively, the Compel Arbitration Order, Expert Exclusion Order, Discovery Order, and

Discovery Reconsideration Order are the “Non-Appealable Interlocutory Orders”), and for such other relief as the Court deems proper.

#### PRELIMINARY STATEMENT

3. This Court lacks jurisdiction to review the Non-Appealable Interlocutory Orders.

4. Plaintiff’s appeal is a transparent attempt to accomplish indirectly what controlling law prohibits him from doing directly. Plaintiff seeks to improperly exploit the District Court’s dismissal of his action with prejudice pursuant to Federal Rule of Civil Procedure 41(b) (“Rule 41(b)”) as a pretext to obtain appellate review of the Non-Appealable Interlocutory Orders. But the law is clear—where an action is dismissed pursuant to Rule 41(b), interlocutory rulings do not merge into the dismissal order. Because the Non-Appealable Interlocutory Orders did not merge into the Rule 41(b) dismissal order, this Court lacks jurisdiction to review them.

\* \* \*

11. Plaintiff’s separate motion seeking to include in the Record exhibits admitted into evidence during the trial of Citigroup’s motion to compel arbitration, as well as the related transcript, should thus be denied as moot. Those materials are irrelevant to the only order properly before this Court for review—the Order dismissing the action pursuant to Rule 41(b)—and therefore have no relevance on this appeal.

\* \* \*

### CONCLUSION

32. Citigroup respectfully requests that the Court grant its motion and dismiss Plaintiff's appeal insofar as it improperly seeks review of the Non-Appealable Interlocutory Orders. Those orders do not merge into the Dismissal Order and this Court thus lacks jurisdiction to review them.

33. Plaintiff's motion to include exhibits admitted during the Compel Arbitration Trial and the related transcript in the Record is likewise moot. Those materials relate solely to the Compel Arbitration Order—an interlocutory ruling that is not properly before this Court for review. Because they are entirely irrelevant to the issues within this Court's jurisdiction, they should not be included in the Record. Citigroup respectfully requests that the Court deny Plaintiff's motion.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: March 16, 2026

/s/ Bruce S. Goodman  
BRUCE S. GOODMAN

## APPENDIX G

### UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

25-794-cv

*Costello v. Paramount Glob., Inc.*

#### SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT'S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION "SUMMARY ORDER"). A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 18th day of May, two thousand twenty-six.

Present:

WILLIAM J. NARDINI,  
EUNICE C. LEE,  
BETH ROBINSON,  
*Circuit Judges.*

SUE COSTELLO, INDIVIDUAL,  
*Plaintiff-Appellant,*

v.

PARAMOUNT GLOBAL, INC.,  
*Defendant-Appellee.*

For Plaintiff-Appellant: SUE COSTELLO, *pro se*,  
Quincy, MA

For Defendant-Appellee: CRYSTAL L. WEEKS,  
Weil, Gotshal & Manges LLP, Washington, DC  
(Yehudah L. Buchweitz, Weil, Gotshal & Manges LLP,  
New York, NY, *on the brief*)

Appeal from a judgment of the United States  
District Court for the Southern District of New York  
(Lorna G. Schofield, *District Judge*).

UPON DUE CONSIDERATION, IT IS  
HEREBY ORDERED, ADJUDGED, AND DECREED  
that the judgment of the district court is AFFIRMED.

Sue Costello, proceeding *pro se*, appeals from a  
district court order dismissing her lawsuit against  
Paramount Global, Inc. ("CBS") for failure to  
prosecute. In 2023, Costello sued CBS, and CBS  
moved to compel arbitration based on an arbitration  
clause in its contract with Costello. The district court  
granted CBS's motion and stayed the case. Rather  
than commence arbitration, Costello repeatedly  
moved for reconsideration of the district court's  
decision and to void the arbitration clause. Following

several warnings and extensions, a magistrate judge recommended dismissing Costello's suit for failure to prosecute or comply with a court order under Federal Rule of Civil Procedure 41(b). *Costello v. Paramount Global, Inc.*, No. 23-cv-1553, 2025 WL 1042285 (S.D.N.Y. Jan. 14, 2025). The district court adopted the recommendation over Costello's objections, *Costello v. Paramount Global, Inc.*, No. 23-cv-1553, 2025 WL 785165 (S.D.N.Y. Mar. 12, 2025), and this appeal followed. We assume the parties' familiarity with the case.<sup>1</sup>

Our review is limited to the district court's dismissal for failure to prosecute. Ordinarily, interlocutory orders—that is, orders issued by a court before the conclusion of proceedings—“merge with the judgment for purposes of appellate review,” and they can therefore be reviewed on appeal alongside the district court's final decision disposing of the case. *Shannon v. Gen. Elec. Co.*, 186 F.3d 186, 192 (2d Cir.

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<sup>1</sup> Costello's motions for leave to file exhibits are denied. To the extent she seeks to file exhibits that were filed in the district court, her motion is unnecessary because these documents are already part of the record on appeal, and to the extent she seeks to file new exhibits, she has not shown that supplementing the record on appeal is warranted. *See* Fed. R. App. P. 10(a)(1), (e)(2); *Loria v. Gorman*, 306 F.3d 1271, 1280 n.2 (2d Cir. 2002) (“Ordinarily, material not included in the record on appeal will not be considered.”). We also deny Costello's motion for an injunction pending appeal, because she did not satisfy the requirements of Fed. R. App. P. 8(a) by either moving first in the district court or showing that it would have been impracticable to do so. *See Agudath Israel of Am. v. Cuomo*, 980 F.3d 222, 225 (2d Cir. 2020). Costello's remaining motions are denied as moot.

1999).<sup>2</sup> “Interlocutory orders do not merge, however, when a final judgment of dismissal is imposed as a sanction for litigation misconduct, such as a failure to prosecute.” *Marquez v. Silver*, 96 F.4th 579, 582–83 (2d Cir. 2024). Because the district court dismissed Costello’s action for failure to prosecute, we lack jurisdiction to review its earlier orders, including its order to compel arbitration.

Rule 41(b) “authorizes the district court to dismiss an action if the plaintiff fails to prosecute or to comply with the rules or a court order.” *Baptiste v. Sommers*, 768 F.3d 212, 216 (2d Cir. 2014). “We review a court’s dismissal under Rule 41(b) for an abuse of discretion in light of the record as a whole.” *Id.* When conducting such review, we recognize that “a Rule 41(b) dismissal remains a harsh remedy to be utilized only in extreme situations,” and that courts should grant *pro se* litigants “special leniency regarding procedural matters.” *LeSane v. Hall’s Sec. Analyst, Inc.*, 239 F.3d 206, 209 (2d Cir. 2001).

Costello argues that the district court did not have authority to dismiss a case subject to arbitration. This argument is incorrect. While it may be true that a “court does not have discretion to dismiss [a] suit on the basis that all the claims are subject to arbitration,” *Smith v. Spizzirri*, 601 U.S. 472, 475–76 (2024), “[t]hat is not to say that the court is barred from dismissing the suit if there is a separate reason to dismiss, unrelated to the fact that an issue in the case is subject to arbitration,” *id.* at 476 n.2, as was the case here.

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<sup>2</sup> Unless otherwise indicated, in quoting cases, all internal quotation marks, alteration marks, emphases, footnotes, and citations are omitted.

“A district court considering a Rule 41(b) dismissal must weigh five factors: (1) the duration of the plaintiff’s failure to comply with the court order, (2) whether plaintiff was on notice that failure to comply would result in dismissal, (3) whether the defendants are likely to be prejudiced by further delay in the proceedings, (4) a balancing of the court’s interest in managing its docket with the plaintiff’s interest in receiving a fair chance to be heard, and (5) whether the judge has adequately considered a sanction less drastic than dismissal.” *Baptiste*, 768 F.3d at 216. Before dismissing a case, a district court must make a finding of “willfulness, bad faith, or reasonably serious fault by evaluating” these factors. *Id.* at 217. “No single factor is generally dispositive,” and “a pro se litigant’s claim should be dismissed for failure to prosecute only when the circumstances are sufficiently extreme.” *Id.* at 216–17. The district court did not abuse its discretion in evaluating these factors.

As to the first factor, the district court properly concluded that the passage of 11 months without compliance with the district court’s order compelling arbitration weighed in favor of dismissal. *See Park v. Kim*, 91 F.4th 610, 613 (2d Cir. 2024) (affirming dismissal as sanction after seven-month delay in producing ordered discovery); *Lyell Theatre Corp. v. Loews Corp.*, 682 F.2d 37, 42–43 (2d Cir. 1982) (failure to prosecute “may warrant dismissal after merely a matter of months”). As to the second, the court repeatedly warned Costello that failure to commence arbitration could result in dismissal for failure to prosecute, and thus she received “clear notice” of the consequences of failing to commence arbitration. *Lewis v. Rawson*, 564 F.3d 569, 582 (2d Cir. 2009). As

to the third, the underlying events in this case occurred before 2020, and this Court has reasoned that “prejudice to defendants resulting from unreasonable delay may be presumed . . . because delay by one party increases the likelihood that evidence in support of the other party’s position will be lost and that discovery and trial will be made more difficult.” *Shannon*, 186 F.3d at 195.

The district court also reasonably evaluated the fourth factor—the court’s interest in managing its docket—given Costello’s repeated attempts to overturn prior decisions. *Cf. LeSane*, 239 F.3d at 210 (finding dismissal unwarranted where, among other distinctions, the plaintiff “did not swamp the court with irrelevant or obstructionist filings”). Following the order to arbitrate, Costello submitted over 20 letters and motions to the district court, repeatedly seeking to relitigate the arbitration order, accusing the court of bias and the defendants of misconduct, and baselessly asserting the arbitration was impossible. In the context of this record, such “groundless motions” and accusations are “dilatory tactics” and a failure to prosecute. *Lyell Theatre Corp.*, 682 F.2d at 42.

As to the fifth factor, dismissal was the appropriate sanction because Costello repeatedly refused to commence arbitration despite clear warnings. *See Ruzsa v. Rubenstein & Sendy Attys at Law*, 520 F.3d 176, 178 (2d Cir. 2008) (reasoning that it was “unclear that a lesser sanction [than dismissal with prejudice] would have proved effective” when the *pro se* plaintiff “fail[ed] to respond to the notice threatening dismissal”). Costello’s argument that she could not bring an arbitration with JAMS because of their “refusal to arbitrate due to criminal conduct,”

Appellant's Brief at 22, is baseless in light of the solely civil claims raised in her complaint. Further, the district court determined that Costello's delay was without any justification, and thus indicated that her failure to comply was "willful[]," in "bad faith," or the result of "reasonably serious fault." *Baptiste*, 768 F.3d at 217.

Finally, Costello's arguments that the district court should have recused or was biased are without merit. See *Liteky v. United States*, 510 U.S. 540, 555 (1994) ("[J]udicial rulings alone almost never constitute a valid basis for a bias or partiality motion."); *Nat'l Auto Brokers Corp. v. General Motors Corp.*, 572 F.2d 953, 958 (2d Cir. 1978) ("The prior representation of a party by a judge or his firm with regard to a matter unrelated to litigation before him does not automatically require recusal.").

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We have considered all of Costello's remaining arguments and find them unpersuasive. Accordingly, we AFFIRM the judgment of the district court.

FOR THE COURT:  
Catherine O'Hagan Wolfe, Clerk