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APPENDIX A:

SUMMARY ORDER OF THE UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT UNDER REVIEW (MAY 18, 2026)

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

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.

25-794-cv

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*).

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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.¹

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.*

¹ 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.

Co., 186 F.3d 186, 192 (2d Cir. 1999).² “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.

“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

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

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*,

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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.”).

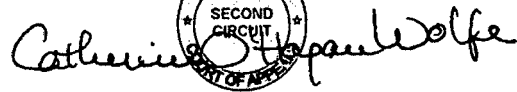
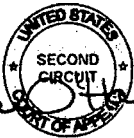
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* * *

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

App A 6

APPENDIX B

JUDGMENT OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN

DISTRICT OF NEW YORK

(MARCH 13, 2025)

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

-----X
SUE COSTELLO,

Plaintiff,

-against-

23 CIVIL 1553

JUDGMENT

PARAMOUNT GLOBAL, INC.,

Defendant.

-----X

It is hereby **ORDERED, ADJUDGED AND DECREED:** That for the reasons stated in the Court's Opinion and Order dated March 12, 2025, the Report's recommendation is ADOPTED in full. The Court certifies, under 28 U.S.C. § 1915(a)(3), that any appeal from the order would not be taken in good faith and, therefore, in forma pauperis status is denied for the purpose of an appeal. Cf. *Coppedge v. United States*, 369 U.S. 438, 444-45 (1962) (holding that an appellant demonstrates good faith when he seeks review of a nonfrivolous issue); accordingly, the case is closed.

Dated: New York, New York

March 13, 2025

TAMMI M HELLWIG

Clerk of Court

BY:

K. mango

Deputy Clerk

App. B 1

APPENDIX C:

MAGISTRATE REPORT AND RECOMMENDATION

HON VALERIE FIGUEREDO

(JAN 14th, 2025)

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

-----X
SUE COSTELLO,

Plaintiff,

23-CV-1553 (LGS) (VF)

-against-

**REPORT &
RECOMMENDATION**

PARAMOUNT GLOBAL, INC.,

Defendant.
-----X

VALERIE FIGUEREDO, United States Magistrate Judge

TO: THE HONORABLE LORNA G. SCHOFIELD, United States District Judge.

Plaintiff Sue Costello, proceeding pro se, commenced this action on February 21, 2023, against Defendant Paramount Global, Inc., alleging claims for breach of contract, breach of the covenant of good faith and fair dealing, tortious interference with a business relationship, constructive fraud, fraudulent inducement, malicious intent to cause emotional and financial distress, and discrimination on the basis of sex. See ECF No. 1. For the reasons set forth below, I respectfully recommend that Plaintiff's case be dismissed for failure to prosecute.

BACKGROUND¹

On June 29, 2018, Plaintiff and Defendant entered into an agreement whereby Plaintiff would deliver a script to CBS for a television series. See, e.g., ECF No. 1 at ¶¶ 51-59. That agreement contained an arbitration clause. See ECF No. 33 at 2; see also ECF No. 1-2 at 15. Plaintiff never delivered a script to CBS, and the relationship deteriorated, such that on February 21, 2023, Plaintiff commenced the instant action. See ECF No. 1. On June 14, 2023, Defendant moved to compel arbitration of Plaintiff's claims, pursuant to an agreement between the parties.

¹ A full recitation of the factual background of this case is included in Judge Schofield's opinion and order from February 1, 2024, with which familiarity is presumed. See ECF No. 33.

See ECF Nos. 20-22. On February 1, 2024, the Honorable Lorna G. Schofield granted the motion to compel arbitration and stayed this case pending conclusion of the arbitration proceeding. See ECF No. 33. The Court concluded that the parties had agreed to arbitrate their disputes and that Plaintiff's claims were within the scope of the parties' arbitration agreement. Id. at 4.

Plaintiff sought reargument of the Court's decision, which was denied on February 15, 2024. See ECF Nos. 34-35. In that memorandum endorsement denying reconsideration, Judge Schofield warned Plaintiff that the failure to take steps towards commencing an arbitration by June 3, 2024, could result in dismissal of the case for failure to prosecute. ECF No. 35.

On April 8, 2024, the Court, in response to the parties' status update, again directed Plaintiff to "take steps towards commencing arbitration proceedings by June 3, 2024." See ECF No. 38. As the Court explained, because Plaintiff was the party asserting claims, Plaintiff is responsible for initiating the arbitration. Id. The Court warned Plaintiff that failure to "take[] steps toward commencing arbitration proceedings by June 3, 2024," could result in the case being "dismissed for failure to prosecute." Id.

On April 10, 2024, in response to a letter submitted by Plaintiff, the Court explained to Plaintiff that if she elected not to pursue her claims in arbitration, "then the case in this Court is closed." See ECF No. 40 at 2. Again, the Court warned Plaintiff that if she failed to comply with the Court's order to take steps to commence an arbitration, the case could be dismissed for failure to prosecute under Federal Rule of Civil Procedure 41(b). Id.

The case was referred to the undersigned on April 15, 2024. See ECF No. 42. By letter dated May 28, 2024, Plaintiff requested an extension of time to commence an arbitration. The Court granted the extension and directed Plaintiff to take steps to commence arbitration

proceedings by July 1, 2024. See ECF No. 49. At a conference on June 5, 2024, the Court again extended Plaintiff's deadline to commence arbitration, to July 31, 2024. See ECF No. 50; ECF No. 55 at 21. On August 2, 2024, Defendant submitted a letter informing the Court that Plaintiff had not yet commenced arbitration proceedings. See ECF No. 63.

On August 5, 2024, the Court entered an order, informing Plaintiff that she had "one final extension of time, until August 30, 2024, to commence the arbitration." See ECF No. 64. The Court again informed Plaintiff that her case could be dismissed if she did not commence an arbitration by the stated deadline. Id. By letter dated September 4, 2024, Defendant notified the Court that Plaintiff had failed to commence arbitration proceedings. See ECF No. 68. Consequently, on October 9, 2024, the Court issued an order to show cause, directing Plaintiff to show cause why the case should not be dismissed under Rule 41(b) for failure to prosecute given Plaintiff's failure to comply with the Court's order to commence arbitration proceedings. See ECF No. 71.

Plaintiff responded to the order to show cause in a letter filed on November 13, 2024. See ECF No. 72. Plaintiff contends that JAMS has refused to take her case "because crimes have been committed" and JAMS will not arbitrate a case where there is "evidence of criminal conduct."² Id. at 2. Plaintiff contends that the Court must "strike the contract language requiring arbitration" and argues that the Court's order compelling arbitration "cannot be complied with because [JAMS] will not participate in the arbitration process." Id. On November 19, 2024, Defendant responded to Plaintiff's letter. See ECF No. 73. Defendant argued that Plaintiff's case

² In her letter, Plaintiff appears to reference certain correspondence with JAMS, but Plaintiff does not include that correspondence in her submission to the Court.

should be dismissed because despite multiple extensions, she nonetheless failed to commence arbitration proceedings, as directed by the Court. Id. at 2-3.

To date, there has been no indication from Plaintiff that she complied with the Court's order requiring her to commence arbitration proceedings.

DISCUSSION

Federal Rule of Civil Procedure 41(b) provides that, "[i]f the plaintiff fails to prosecute or to comply with these rules or a court order, a defendant may move to dismiss the action or any claim against it." Fed. R. Civ. P. 41(b). A district court may also dismiss an action sua sponte under Rule 41(b) for failure to prosecute. See Link v. Wabash R. Co., 370 U.S. 626, 630-31 (1962); see also Harding v. Goord, 135 F. App'x 488, 488 (2d Cir. 2005) ("Although not explicitly authorized by Rule 41(b), a court may dismiss a claim for failure to prosecute sua sponte."); White v. Westchester Cnty., No. 19 Civ. 03604 (KMK), 2020 WL 7323422, at *1 (S.D.N.Y. Dec. 11, 2020) ("[I]t has long been recognized that a district court has the inherent authority to dismiss for failure to prosecute sua sponte."). In considering whether to dismiss a case pursuant to Rule 41(b), courts examine 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 v. Sommers, 768 F.3d 212, 216 (2d Cir. 2014) (internal quotation marks and citations omitted). Generally, no one factor

is “dispositive,” id., and the sanction of dismissal should be considered “in light of the record as a whole.” United States ex rel. Drake v. Norden Sys., Inc., 375 F.3d 248, 254 (2d Cir. 2004).

While “pro se plaintiffs should be granted special leniency regarding procedural matters[,]” Obot v. Comm’r, 254 F. App’x 57, 58 (2d Cir. 2007) (internal quotation marks and citations omitted), “even pro se litigants must prosecute claims diligently, and dismissal . . . is warranted where the court gives warning.” Jean-Felix v. Great Lakes Higher Educ. Corp., No. 21 Civ. 6122 (ALC) (RWL), 2023 WL 3866764, at *1 (S.D.N.Y. May 3, 2023) (internal quotation marks and citations omitted); see also McCord v. City of N.Y., No. 13 Civ. 2008 (AJN), 2014 WL 4392069, at *2 (S.D.N.Y. Sept. 4, 2014) (explaining that Rule 41(b) dismissal is a “harsh remedy” that should be “employ[ed] only when [the district court] is sure of the impotence of lesser sanctions”) (alteration in original, internal quotation marks and citations omitted). Unless the dismissal order states otherwise, a dismissal under Rule 41(b) “operates as an adjudication on the merits.” Link, 370 U.S. at 630 (citing Fed. R. Civ. P. 41(b)).

Considering the factors set forth above in light of the record as a whole, dismissal with prejudice of Plaintiff’s case is appropriate. First, Plaintiff has taken no steps towards commencing arbitration proceedings despite a February 1, 2024 court order directing her to do so. As discussed, the Court concluded that Plaintiff was required to arbitrate her claims against Defendant based on the arbitration provision in the parties’ agreement. See ECF No. 33 at 4. The Court considered and rejected Plaintiff’s various arguments for why the arbitration clause was unenforceable. Id. at 5-9. Eleven months have passed and despite multiple extensions, Plaintiff has still not commenced arbitration proceedings. As the Second Circuit has explained, even “a delay of a matter of months can potentially warrant dismissal.” Yadav v. Brookhaven Nat’l Lab.,

487 F. App'x 671, 672-73 (2d Cir. 2012) (summary order) (internal quotation marks and citation omitted). Here, Plaintiff's dilatory conduct for nearly a year weighs in favor of dismissal.

Second, Plaintiff was repeatedly warned that her failure to commence arbitration proceedings could lead to dismissal of her case. On February 1, 2024, Plaintiff was informed that her claims had to be arbitrated and that she needed to commence arbitration proceedings. See ECF No. 33 at 4. In the last eleven months, Plaintiff was warned five times that her failure to commence arbitration proceedings could result in dismissal of her case. Plaintiff was warned on February 15 (see ECF No. 35), April 8 (see ECF No. 38), April 10 (see ECF No. 40), August 5 (see ECF No. 64), and October 9 (see ECF No. 71). Each time Plaintiff was alerted to the possibility of dismissal of her case if she did not commence arbitration proceedings. Plaintiff thus received repeated and clear warnings concerning the potential consequence of her failure to abide by the Court's order that she commence arbitration proceedings. The second factor also supports dismissal.

The third factor, too, favors dismissal. Defendant will be prejudiced by further delay. Plaintiff's factual allegations concern conduct that occurred beginning in July 2017 and continuing through 2018. See, e.g., ECF No. 1 at ¶¶ 7-66. As the Second Circuit has recognized, "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 v. Gen. Elec. Co., 186 F.3d 186, 195 (2d Cir. 1999). Further, the case is stayed in this Court, and there appears to be no likelihood of a resolution for Defendant, because Plaintiff has refused to commence arbitration proceedings. Dhaliwal v. Mallinckrodt PLC, No. 18 Civ. 3146 (VSB), 2020 WL 5236942, at *2 (S.D.N.Y. Sept. 2, 2020) (finding prejudice to defendant where plaintiff refused

to commence arbitration and “nearly a year” had passed since the court’s order requiring arbitration); see also Shannon, 186 F.3d at 195 (noting that prejudice to a defendant may be “presumed” from “unreasonable delay”) (internal quotation marks and citation omitted).

With respect to the fourth factor, the Court has a strong interest in managing its docket and the Court cannot ignore the binding arbitration provision in the parties’ agreement. Although Plaintiff asks the Court to “remove the arbitration clause” (see ECF No. 74 at ¶ 7), the Court cannot “bypass arbitration to review [Plaintiff’s] claims.” Ventoso v. Shihara, No. 19 Civ. 3589 (PAE), 2022 WL 19706, at *3 (S.D.N.Y. Jan 3, 2022) (concluding that dismissal was appropriate where Plaintiff refused to pursue arbitration for two and a half years). Plaintiff has had multiple opportunities to commence arbitration and it is not an efficient use of the Court’s resources to permit this case to remain stayed indefinitely. Consequently, the fourth factor also weighs in favor of dismissal.

Finally, even with the deference afforded to Plaintiff given her pro se status, the fifth factor also favors dismissal. Plaintiff has failed to commence arbitration proceedings without any justification. Although Plaintiff claims that JAMS has refused to arbitrate her claims because they concern criminal conduct (see ECF No. 72 at 2, 4; see also ECF No. 74), a review of Plaintiff’s complaint undermines her contention. Plaintiff asserts seven causes of action in her complaint, all of them civil and, at bottom, all stem from an agreement Plaintiff signed with Defendant on June 29, 2018, by which Defendant is alleged to have purchased Plaintiff’s script for a television series. See ECF No. 1 at ¶¶ 48-58. Plaintiff appears to allege that Defendant stole her “intellectual property” (see, e.g., id. at ¶¶ 31, 53, 93), but although she reported that “theft” to the police (see id. at ¶ 72), copyright or trademark infringement is a civil claim that can be

arbitrated. See Kamakazi Music Corp. v. Robbins Music Corp., No. 80 Civ. 2877 (RWS), 1980 WL 1159, at *3 (S.D.N.Y. June 5, 1980) (concluding that both copyright and trademark infringement claims are subject to arbitration “when provided for by agreement”); see also Yash Raj Films (USA) Inc. v. Dishant.com LLC, No. 8 Civ. 2715 (ENV) (RML), 2009 WL 4891764, at *9 (E.D.N.Y. Dec. 15, 2009) (stating that “copyright infringement and trademark infringement are torts”).

Moreover, Plaintiff’s sex-discrimination claim in count seven of the complaint is also civil, and although Plaintiff discusses the #MeToo movement throughout her complaint, she also alleges that she “never made any sexual allegations against Les Moonves.” ECF No. 1 at ¶ 5; see also id. at ¶ 3, 63, 65, 87. It is thus not apparent to the undersigned how JAMS could have concluded, as Plaintiff claims, that the allegations raised in the complaint filed in this Court raise criminal claims that cannot be subject to arbitration. Regardless, Plaintiff was compelled by court order to commence arbitration and was warned in five orders that her failure to comply with that order could result in complete dismissal of her case. See ECF Nos. 35, 38, 40, 64, 71. Given Plaintiff’s steadfast refusal to commence arbitration in the face of clear warnings, the Court is not aware of a lesser remedy that would be effective to convince Plaintiff to comply with the Court’s order to commence arbitration. See Dhaliwal, 2020 WL 5236942, at *2 (concluding that lesser remedy, such as monetary sanctions, would not be adequate to compel arbitration where plaintiff refused to comply with court order to commence arbitration).

In short, all of the factors weigh in favor of dismissal given Plaintiff’s failure to commence arbitration and the Court’s repeated warnings that her failure to do so would result in dismissal. See Dixon v. Wells Fargo Bank, N.A., No. 21-CV-10 (JPC), 2022 U.S. Dist. LEXIS

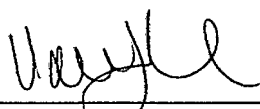
127148, at *2-3 (S.D.N.Y. July 18, 2022) (dismissing case for failure to prosecute where pro se plaintiff had not commenced arbitration in the nine-month period after being compelled to do so, and was warned twice “that failure to comply would result in the case being dismissed without prejudice”).

CONCLUSION

For the reasons discussed herein, I respectfully recommend that Plaintiff's case be dismissed with prejudice under Federal Rule of Civil Procedure 41(b) for failure to prosecute. I further recommend that the dismissal not be construed to foreclose Plaintiff's right to pursue arbitration of her claims, should she attempt to commence arbitration in the future.

SO ORDERED.

DATED: New York, New York
January 14, 2025



VALERIE FIGUEREDO
United States Magistrate Judge

PROCEDURE FOR FILING OBJECTIONS TO THIS REPORT AND RECOMMENDATION

Pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal Rules of Civil Procedure, the parties have fourteen (14) days (including weekends and holidays) from service of this Report and Recommendation to file any objections. See also Fed. R. Civ. P. 6(a), 6(b), 6(d). A party may respond to any objections within 14 days after being served. Any objections and responses shall be filed with the Clerk of the Court. Any request for an extension of time to file objections or responses must be directed to the Honorable Lorna G. Schofield. If a party fails to file timely objections, that party will not be permitted to raise any objections to this Report and Recommendation on appeal. See 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72; Fed. R. Civ. P. 6(a), 6(b), 6(d); Thomas v. Arn, 474 U.S. 140 (1985); Wagner & Wagner, LLP v. Atkinson, Haskins, Nellis, Brittingham, Gladd & Carwile, P.C., 596 F.3d 84, 92 (2d Cir. 2010).

APPENDIX D:

ORDER OF THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT DENYING REHEARING
EN BANC (JULY 1, 2026)

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

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 1st day of July, two thousand twenty-six.

Sue Costello, Individual,

Plaintiff - Appellant,

v.

Paramount Global, Inc.,

Defendant - Appellee.

ORDER

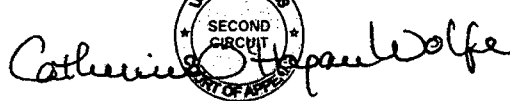
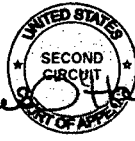
Docket No: 25-794

Appellant, Sue Costello, filed a petition for panel rehearing, or, in the alternative, for rehearing *en banc*. The panel that determined the appeal has considered the request for panel rehearing, and the active members of the Court have considered the request for rehearing *en banc*.

IT IS HEREBY ORDERED that the petition is denied.

FOR THE COURT:

Catherine O'Hagan Wolfe, Clerk

App. D1

**Additional material
from this filing is
available in the
Clerk's Office.**