

**RECEIVED**

**Dec 07 2022**

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY  
Court of Common Pleas

ALEX KINLAW, JR., Circuit Court Judge

Case No. 2021-001096  
Lower Court Case No. 2021-CP-23-02564

Jeremy Wilson,

Respondent,

v.

Jeffrey G. Hedges and  
JH3 Consulting, LLC,

Appellants.

---

**RECORD ON APPEAL**

---

S. Tyler Graves (SC Bar No. 103173)  
Logan S. Davis (SC Bar No. 104429)  
Graves & Davis, LLC  
125 Wappoo Creek Drive  
Building E, Suite 102  
Charleston, South Carolina 29412  
Tel: (843) 805-4649  
Attorneys for Appellant

Molly Hubbard Cash  
500 East Mcbee Ave  
#1151  
Greenville, SC 29601  
864-735-8781  
Attorney for Respondent

Beau Brogdon (SC Bar No. 103803)  
Campbell Teague LLC  
16 W. North St.  
Greenville, SC 29601  
Tel: (864) 326-4186  
Attorney for Respondent

**INDEX**

**ORDERS**

Form 4 Order Denying Defendants’ Motion to Dismiss and/or Stay and Compel Mediation and Arbitration..... 2

**PLEADINGS**

Complaint..... 5

**TRANSCRIPTS**

Transcript of Hearing on Defendant’s Motion to Dismiss and/or Stay and Compel Mediation and Arbitration..... 14

**EXHIBITS**

Exhibits are identified under their respective pleadings or motions

**OTHER MOTIONS AND MISCELLANEOUS**

Defendants’ Motion to Dismiss and/or Stay and Compel Mediation and Arbitration ..... 36

Exhibit A – Independent Contractor Agreement ..... 38

Defendants’ Memorandum in Support of Motion to Dismiss and/or Stay and Compel Mediation and Arbitration ..... 44

Exhibit A – Independent Contractor Agreement ..... 58

Memorandum in Opposition of Motion to Dismiss and/or Stay and Compel Mediation and Arbitration..... 64

Exhibit A – Termination Document ..... 73

Exhibit B – February 2, 2021 Email Correspondence ..... 74

Defendants’ Letter to the Court regarding Supplemental Exhibits..... 75

Exhibit A – Supplemental Exhibits..... 76

Independent Contractor Agreement..... 82

Termination Document ..... 88

Certificate of Counsel ..... 89

Jeremy Wilson  
PLAINTIFF(S)

Jeffrey G Hedges et al  
DEFENDANT(S)

**DISPOSITION TYPE (CHECK ONE)**

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED** (*CHECK REASON*):  Rule 12(b), SCRPC;  Rule 41(a), SCRPC (Vol. Nonsuit);  Rule 43(k), SCRPC (Settled);  
 Other
- ACTION STRICKEN** (*CHECK REASON*):  Rule 40(j), SCRPC;  Bankruptcy;  
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  
 Other
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*):  
 Affirmed;  Reversed;  Remanded;  
 Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

**IT IS ORDERED AND ADJUDGED:**  See attached order (formal order to follow)  Statement of Judgment by the Court:

At the call of the case the Plaintiff was represented by Attorney Beau Bagnol Brogdon and Attorney Molly Hubbard Cash. The Defendants were represented by Attorney Logan Steele Davis and Attorney Stephen Tyler Graves. The matter is before the Court pursuant to the Defendant, Jeffrey G. Hedges' Motion to Dismiss. After hearing the arguments of Counsel, the Court is inclined to deny the Motion filed.

**ORDER INFORMATION**

This order  ends  does not end the case.

See Page 2 for additional information.

**For Clerk of Court Office Use Only**

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 09/16/2021 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

**Court Reporter:**

**E-Filing Note:** The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

---



Greenville Common Pleas

**Case Caption:** Jeremy Wilson vs. Jeffrey G Hedges , defendant, et al

**Case Number:** 2021CP2302564

**Type:** Order/Electronic Form 4

So Ordered

s/Alex Kinlaw, Jr., #2763

Electronically signed on 2021-09-16 12:06:49 page 3 of 3

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Jeremy Wilson,

Plaintiff,

v.

JH3 Consulting, LLC and Jeffrey G.  
Hedges,

Defendants.

IN THE COURT OF COMMON PLEAS  
FOR THE THIRTEENTH JUDICIAL  
CIRCUIT

Case No. \_\_\_\_\_

**SUMMONS**

TO THE DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer to the Complaint upon the subscriber at the offices of CAMPBELL TEAGUE, LLC, 16 W. NORTH ST., GREENVILLE, SOUTH CAROLINA 29601, within thirty (30) days after the service hereof and if you fail to answer the Summons and Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Summons and Complaint.

CAMPBELL TEAGUE LLC

/s/ Beau B. Brogdon

Beau B. Brogdon (SC Bar # 103803)

Molly H. Cash (SC Bar # 103152)

16 W. North St.

Greenville, South Carolina 29601

PH: (864) 326-4186

beau@campbellteague.com

molly@campbellteague.com

*Attorneys for Plaintiff Jeremy Wilson*

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Jeremy Wilson,

Plaintiff,

v.

JH3 Consulting, LLC and Jeffrey G.  
Hedges,

Defendants.

IN THE COURT OF COMMON PLEAS  
FOR THE THIRTEENTH JUDICIAL  
CIRCUIT

Case No. \_\_\_\_\_

**COMPLAINT**  
**(JURY TRIAL DEMANDED)**

COMES NOW Jeremy Wilson (“Wilson” or “Plaintiff”), by and through his undersigned counsel, and for its Complaint against JH3 Consulting, LLC (“JH3 Consulting”) and Jeffrey G. Hedges (“Hedges”) (collectively, “Defendants”) and states as follows:

**PARTIES, JURISDICTION AND VENUE**

1. Wilson is a resident and citizen of Greenville County, South Carolina.
2. Upon information and belief, Hedges is a resident and citizen of North Carolina and the managing member of JH3 Consulting.
3. JH3 Consulting is a North Carolina limited liability company doing business in North Carolina and South Carolina. Upon information and belief, Hedges is authorized to accept service on behalf of JH3 Consulting at 170 S. Willow Brook Drive, Asheville, North Carolina, 28806.
4. This Court is vested with subject matter jurisdiction over the matters involved in this pleading by virtue of Article V, § 11, of the South Carolina Constitution, as enabled by South Carolina Code § 14-5-350.

5. This Court has personal jurisdiction over the parties by virtue of South Carolina Code § 36-2-802 and § 36-2-803.

6. Venue is proper in this Court by virtue of South Carolina Code § 15-7-30.

### **FACTUAL ALLEGATIONS**

7. Upon information and belief, JH3 Consulting was formed in 2014 to provide consulting services to chiropractic clinics.

8. Upon information and belief, JH3 Consulting is owned by Hedges as its sole member.

9. In 2017, Hedges approached Wilson and offered Wilson an opportunity to be an independent contractor for JH3 Consulting, promising Wilson financial compensation for his services.

10. On November 22, 2017, Hedges presented an Independent Contractor Agreement to be executed by and between JH3 Consulting and Wilson.

11. The Contract was prepared and drafted by Hedges or an agent of Hedges (the “Contract”).

12. Wilson signed the Contract on November 22, 2017.

13. Hedges subsequently signed the Contract on behalf of JH3 Consulting on November 27, 2017.

14. Per the terms of the Contract, the parties agreed that Wilson would recruit new clients and provide onboarding support and assistance to these clients (the “Contractor Services”) for the benefit of JH3 Consulting in exchange for compensation.

15. Per the terms of the Contract, the parties agreed that “[t]he Company will collect twenty percent (20%) of the gross collections of each Client and Contractor receive compensation in an amount equal to forty percent (40%) of the collections NET from each Client to whom Contractor has provided assistance for Twelve (12) months.”

16. Per the terms of the Contract, the parties also agreed that compensation owed to Wilson shall be “paid on a monthly basis in accordance with the Company’s standard payroll procedures and cycles.”

17. After execution of the Contract, Wilson provided the Contractor Services pursuant to the terms of the Contract and the parties’ mutual understanding of its terms.

18. The Contractor Services that Wilson provided significantly increased the revenue of JH3 Consulting, the precise amount of which is currently unknown to Wilson.

19. In or around April of 2019, Defendants began withholding payments owed to Wilson pursuant to the Contract.

20. When Wilson asked why he was no longer getting paid for providing the Contractor Services, Wilson was told not to worry and was assured that he would be paid for his services.

21. On or about April 1, 2019, Defendants induced Wilson to sign a termination document (the “Termination Document”) under the guise that the parties would execute a new contract which would replace the Contract.

22. The Termination Document states as follows:

“This is a formal agreement that Jeremy Wilson IC Contract has ended and both Jh3 Consulting and Jeremy Wilson are agreeing that Jeremy has been paid in full and reports that he has been paid to the terms of the IC Contract and if another Client comes on board Jeremy Wilson will be the IC for that Client and will sign a new IC agreement. Jeremy reports that he has nothing bad to say about Jh3 Consulting and this has been a great experience and Jh3 has been transparent throughout the process.”

23. On or after the Termination Document was executed, Defendants intentionally induced Wilson to continue to provide the Contractor Services by promising to compensate Wilson for providing the Contractor Services.

24. After the Termination Document was signed, Wilson recruited and onboarded multiple chiropractic clients for JH3 Consulting (the "New Clients") in reliance upon Hedges' promises to compensate Wilson in accordance with the parties' understanding at the time that the Contract was executed.

25. As a result of the services provided by Wilson, the New Clients paid a significant sum to JH3 Consulting which amounted to approximately ten-thousand dollars (\$10,000) per month per client.

26. In or about June of 2019, Hedges stated that instead of compensating Wilson in accordance with the parties' prior Contract, he would compensate Wilson by granting Wilson an ownership interest in JH3 Consulting

27. Hedges even went so far as to expressly permit Wilson to sign contracts with clients as a member of JH3 Consulting.

28. For a period of sixteen months following execution of the Termination Document, Defendants continued to hold Wilson out to the public as an agent of JH3 Consulting and Wilson continued to provide Contractor Services in reliance upon Defendants' representations.

29. As of the date of this Complaint, Defendants have not paid or compensated Plaintiff in any form or fashion since April 2019.

**COUNT I:**  
**UNJUST ENRICHMENT**

30. Plaintiff realleges all preceding paragraphs as if fully restated verbatim herein.

31. Plaintiff conferred a benefit upon Defendants, namely, Plaintiff provided the Contractor Services to Defendants.

32. Defendants were enriched as a result of the aforesaid benefit.

33. It would be unjust to allow Defendants to retain this benefit without compensating Plaintiff.

WHEREFORE, Plaintiff demands judgment against Defendants for the reasonable value of Plaintiff's performance in an amount to be determined at trial, and for such other, further and different relief as this Court deems just and proper.

**COUNT II:**  
**PROMISSORY ESTOPPEL**

34. Plaintiff realleges all preceding paragraphs as if fully restated verbatim herein.

35. Defendants made unambiguous promises to Plaintiff, namely, Defendants promised to execute a new contract to replace the Contract and Defendants promised to compensate Plaintiff for all services provided after the Alleged Termination.

36. Plaintiff reasonably relied upon that promise by continuing to provide the Contractor Services.

37. Plaintiff's reliance was expected and foreseeable.

38. As a result, Plaintiff has suffered injury.

WHEREFORE, Plaintiff demands judgment against Defendants for compensatory damages in an amount to be determined at trial, and for such other, further and different relief as this Court deems just and proper.

**COUNT III:**  
**VIOLATION SOUTH CAROLINA UNFAIR TRADE PRACTICES ACT**

39. Plaintiff realleges all preceding paragraphs as if fully restated verbatim herein.

40. Title 39 of the South Carolina Code prohibits the commission of unfair or deceptive acts or practices in the conduct of any trade or commerce.

41. Defendants are engaged in trade or commerce within the meaning of the South Carolina Unfair Trade Practices Act, and the business relationship between Defendants and Plaintiff is trade or commerce within the meaning of the Act by nature of the services described in the preceding paragraphs.

42. Defendants committed a least one unfair or deceptive act toward Plaintiff in the course of their business relationship, all as alleged in the preceding factual allegations.

43. As a direct and proximate consequence of the unfair or deceptive act(s) that Defendants perpetrated against Plaintiff, Plaintiff has sustained, and continues to sustain, significant pecuniary damages.

44. The types of unfair or deceptive acts that Defendants has perpetrated against Plaintiff are likely to have an adverse impact on the public interest.

45. Plaintiff is informed and believes that, due to the circumstances of this dispute and the nature of the act(s) involved, Defendants' wrongful conduct was perpetrated with a willful or knowing intent, entitling Plaintiff to treble damages.

WHEREFORE, Plaintiff demands judgment against Defendants, compensatory and treble damages in an amount to be determined at trial, attorneys' fees, costs, and for such other, further and different relief as this Court deems just and proper.

**COUNT IV:**  
**FRAUD AND MISREPRESENTATION**

46. Plaintiff realleges all preceding paragraphs as if fully restated verbatim herein.

47. Defendants made multiple false representations of a material facts to Plaintiff, namely, Defendants represented that Plaintiff would be compensated for the services that Plaintiff provided and treated fairly.

48. Defendants in fact had no intention of compensating Plaintiff for the services Plaintiff provided.

49. Defendants knew or had reckless disregard for the falsity of these representations and intended that Plaintiff act upon it by leading Plaintiff to believe that he would be compensated for Plaintiff's services.

50. Defendants were conscious or chargeable with consciousness of the wrongdoing.

51. Plaintiff was ignorant of the falsity of these representations and justifiably relied on Defendants' representations.

52. Plaintiff had a right to rely on Defendants for these representations and actually relied on them by providing services.

53. As a direct and proximate consequence of the fraudulent misrepresentations of Defendants, Plaintiff has incurred significant monetary damages.

WHEREFORE, Plaintiff demands judgment against Defendants for compensatory and punitive damages in an amount to be determined at trial, and for such other, further and different relief as this Court deems just and proper.

Respectfully submitted this 27th day of May, 2021.

CAMPBELL TEAGUE LLC

/s/ Beau B. Brogdon

Beau B. Brogdon (SC Bar #103803)

Molly H. Cash (SC Bar #103152)

16 W. North St.

Greenville, South Carolina 29601  
PH: (864) 326-4186  
beau@campbellteague.com  
molly@campbellteague.com  
*Attorneys for Plaintiff Jeremy Wilson*



I N D E X

(There were no witnesses called.)

E X H I B I T S

(There were no exhibits introduced.)

P R O C E E D I N G S

1  
2 THE COURT: All right. The first -- first case is  
3 Jeffrey [sic] Wilson vs. Jeffrey Hedges, Defendant, case  
4 number 2021-CP-23-2564.

5 Anybody here on that?

6 MR. GRAVES: Yes, Your Honor.

7 THE COURT: Come forward.

8 This is Defendant s motion to dismiss. This is an  
9 unfair trade practices action.

10 I don't think I've seen you lawyers any -- I haven't  
11 seen you lawyers before in my life. So you have to  
12 identify who you are.

13 MR. GRAVES: Your Honor, Tyler Graves on behalf of  
14 the Defendants.

15 THE COURT: Okay. Tyler Graves on behalf of the  
16 Defendants.

17 MR. GRAVES: Yes, Your Honor. And my law partner,  
18 Logan Davis, as well.

19 THE COURT: Hold on one second.

20 MR. GRAVES: Yes, sir.

21 (Pause.)

22 THE COURT: All right. Counsel, if you would give me  
23 those names again.

24 MR. GRAVES: Tyler Graves and Logan Davis.

25 THE COURT: Stephen Tyler Graves?

1 MR. GRAVES: Yes, Your Honor.

2 THE COURT: And Logan Steele Davis?

3 MR. DAVIS: Yes, Your Honor.

4 THE COURT: All right. And on behalf of the  
5 Plaintiff?

6 MR. BROGDON: Yes, Your Honor. I am Beau Brogdon.  
7 And my Co-Counsel is Molly Cash.

8 THE COURT: Molly Cash.

9 All right. Feel free to remove your mask when you  
10 speak, if you feel more comfortable.

11 Okay. This is Defendants motion to dismiss.

12 MR. GRAVES: Yes, Your Honor.

13 THE COURT: So I'll turn it over to you.

14 MR. GRAVES: Good morning.

15 May it please the Court.

16 THE COURT: And give me -- give me as much factual  
17 background as you think I need. I read the -- the  
18 complaint.

19 But you go ahead.

20 MR. GRAVES: Yes, Your Honor. And I don't think  
21 there's much needed. This is a dispute between the  
22 parties arising out of a relationship that was between  
23 Plaintiff and Defendants. Defendants are a consulting  
24 company that consults for chiropractic services throughout  
25 the United States.

1           They entered into an independent contractor agreement  
2 with Plaintiffs -- or with Plaintiff. And in that -- in  
3 that agreement, there's a mediation arbitration provision  
4 that we're here to enforce. Your Honor, as I stated, at  
5 the center of our motion is the independent contractor  
6 agreement. We attached that as exhibit A to our  
7 complaint.

8           And, first, just to start off, I would like to note  
9 the strong presumption of the -- of courts being in favor  
10 of arbitration, both federal and state court. I laid out  
11 some cases in our brief and I'll reference those. But  
12 just at the onset, Towles vs. United Health Corp. --  
13 Healthcare Corp. It is a South Carolina state case that  
14 notes that presumption in favor of arbitration. And,  
15 also, AT&T Mobility is the United States Supreme Court  
16 case that notes that.

17           Your Honor, this is an enforceable contract. The  
18 parties entered into it. As is explained in the  
19 complaint, Plaintiff signed the agreement on November  
20 22nd, 2017. The Defendants signed it on November 27th,  
21 2017.

22           And I don't believe there's been any dispute to there  
23 being an enforceable contract. There's nothing referenced  
24 in Plaintiff's brief to the contrary. And so I would just  
25 note that there was an offer acceptance, meeting of the

1 minds, consideration. And so we have a valid contract.

2 Your Honor, as an additional note, there was a  
3 termination entered into between the parties in April of  
4 2019. And that termination is somewhat crucial here as we  
5 move forward. I think that the Plaintiffs made an  
6 argument that it kind of separates the two. And that they  
7 shouldn't be subject to the mediation arbitration  
8 agreement that's included in the -- or the provision  
9 that's included in the agreement.

10 However, South Carolina state law is very clear that  
11 it is severable from the contract. And so we would argue  
12 that it is separate and distinct. And you have to do some  
13 factors that we'll discuss in just a second under the FAA  
14 and attach it as a significant relationship between the  
15 two so that it is, actually, in fact, a -- subject to the  
16 arbitration agreement.

17 And, Your Honor, that gets me to the FAA. And so  
18 this is a contract agreement that is governed by the FAA.  
19 And I'll note that section four of the FAA states that a  
20 Court shall -- not may, but shall enforce that arbitration  
21 agreement when it is, in fact, enforceable there. And it  
22 should only be overturned if there's some issue as to the  
23 contract.

24 A party seeking to enforce an arbitration agreement  
25 under the FAA -- and there's four factors there. The

1 first is that there's a dispute between the parties. And  
2 I think that we, obviously, have that here. Plaintiff's  
3 filed their complaint. And there's a dispute as to that.

4 The second is where a majority of my analysis is  
5 focused on in our brief. It's a written agreement that  
6 includes the provision and that it encompasses the claims.

7 And I would note that I want to start with the broad  
8 language of the mediation arbitration provision. And I'll  
9 just read that into the record. It notes that the parties  
10 agree that all disputes that relate to or arise from the  
11 relationship between the contractor, which is the  
12 Plaintiff here, and the company, the Defendants, shall  
13 first be submitted to mediation. And if mediation is  
14 unsuccessful, the parties agree that such disputes shall  
15 be solved through binding arbitration conducted in  
16 accordance with the rules of the American Arbitration  
17 Association.

18 I'll, also, note the last sentence there, The parties  
19 understand and agree that their only remedy for any  
20 dispute covered by this agreement shall be through binding  
21 arbitration. And that they cannot proceed with such a  
22 dispute in a court or any similar forum.

23 And so I turn with that broad language there of  
24 encompassing all claims, any dispute between the parties  
25 and connect the full relationship. The complaint goes

1 through and explains these contractor services that were  
2 provided by Plaintiff to Defendant and the compensation  
3 that would be exchanged for the services.

4 The complaint defines the term contractor services.  
5 And throughout it, it's used as Plaintiff is providing  
6 contractor services, the defined term from the agreement.  
7 Even after the termination, they use the same contractor  
8 services defined term throughout. And it's included in  
9 their claims that they brought under unjust enrichment and  
10 promissory estoppel. They reference the contractor  
11 services that's defined from the agreement.

12 Your Honor, that would meet the status -- or satisfy  
13 a significant relationship that would then allow the  
14 arbitration agreement to be enforceable as to all of the  
15 claims in the complaint.

16 And, Your Honor, I would just note there's some good  
17 case law -- federal case law that talks about the broad  
18 arbitration clause and the significant relationship. And  
19 I would just quote here, The test is not whether a claim  
20 arose under one agreement or another, but whether a  
21 significant relationship exists between the claim and  
22 agreement containing the arbitration clause. The scope of  
23 an arbitration clause in one contract can extend to a  
24 dispute arising under a second contract provided that the  
25 dispute significantly relates to the first agreement.

1           And I think that's exactly what we have here.  
2           Regardless of if there's a termination or anything, that  
3           mediation arbitration agreement would encompass all the  
4           claims in this case.

5           I'll, also, note there was no distinction -- no  
6           distinction in the complaint as to contract services that  
7           were provided under the agreement and contract services  
8           that were provided after the termination of that  
9           agreement.

10          Your Honor, also, the final -- well, actually, the  
11          third element is that there will be a foreign commerce  
12          involved in this case. And as I noted earlier, this is a  
13          consulting company that provides services around the  
14          United States. It's a North Carolina Defendant, both  
15          North Carolina LLC, an individual versus a South Carolina  
16          Plaintiff. I think it's apparent that there would be  
17          activities that crossed state lines.

18          And, Your Honor, the final would be -- the final  
19          element, the fourth element would be a failure to  
20          arbitrate the dispute. And, obviously, that's what we  
21          have here. Because we're -- they filed a complaint in  
22          this Court and we're arguing this motion as -- to enforce  
23          that arbitration agreement.

24          I have a couple notes as to rebuttal on Plaintiff's  
25          argument. First, they argue that the -- we have failed to

1 mediate and refuse to mediate the case. And that we have  
2 to do that in order to trigger arbitration. Your Honor, I  
3 think that it's, actually, to the contrary.

4 The day that we accepted service on behalf of our  
5 Defendants, we reached out to Plaintiff's Counsel and  
6 tried to engage in mediation, requested that we engage in  
7 that mediation. Pursuant to the terms of the agreement  
8 and, also, with South Carolina case law, obviously, it's a  
9 requirement. And that was expressly declined in an e-mail  
10 that I provided to you as a supplemental exhibit.

11 And then, also, the -- the evidence that they  
12 provided as to our refusal was an e-mail from our  
13 Defendants North Carolina Counsel. And he made it very  
14 clear that he was not accepting service as to this case,  
15 had nothing to do with this case, isn't licensed in South  
16 Carolina. And, therefore, he couldn't agree to a  
17 mediation -- an arbitration if he's not representing the  
18 parties in that case. That would be our duty. And,  
19 again, it doesn't -- I don't think it matters much because  
20 we've offered to mediate and then trigger arbitration  
21 after that.

22 They, also, make an argument as to the claims. And I  
23 would just reference the significant relationship argument  
24 in my brief and that I've presented here today. And as  
25 far as the termination goes, again, note the -- the strong

1 case law that says it's severable and would still survive.

2 In conclusion, Your Honor, there's a strong  
3 presumption in favor of arbitration, again, both in  
4 federal and state court. And if there's any doubts as to  
5 the enforceability, it should be in favor of arbitration.

6 Next, obviously, the claims arise within the scope of  
7 our very, very broad arbitration agreement. And then,  
8 finally, it is an enforceable contract. And I don't think  
9 there's been any argument presented to date to say  
10 otherwise.

11 Your Honor, there's, also, a -- a side issue related  
12 to the discovery in this matter. And I don't know if you  
13 want me to address that now or after Plaintiff's --

14 THE COURT: Well, you -- you can go ahead.

15 MR. GRAVES: So after we filed our motion,  
16 Plaintiff's served a request for admission on August 26,  
17 which are due on the 25th of September. As you know, if  
18 no response is provided, they would be deemed admitted.  
19 And it's a little bit of an issue for us because there is  
20 some case law out there that would -- that that could be  
21 construed as a waiver of arbitration if we engage in  
22 discovery and litigation in this case.

23 And so I would ask the Court to either stay discovery  
24 until we receive an order as to the arbitration piece and  
25 give us some time to either answer discovery or determine

1 what we need to do as to arbitration. Of course, Your  
2 Honor, if you think that we need to engage in the  
3 discovery, we'd be happy to do so, as long as we can  
4 explicitly note and the parties agree that it's not a  
5 waiver as to arbitration.

6 Because, of course, once we get to arbitration, we're  
7 going to engage in discovery there as well. So we're not  
8 trying to evade discovery by any means. We just are  
9 trying to get this in the appropriate venue. And that's  
10 what we'd ask you to do here, Your Honor.

11 THE COURT: Okay.

12 MR. BROGDON: Good morning, Your Honor.

13 May it please the Court.

14 My opposing Counsel did a -- I think a -- a good job  
15 of explaining some of the background facts between the  
16 parties.

17 But -- and some additional facts, Your Honor, these  
18 parties are not strangers by any stretch of the  
19 imagination. They've been business partners for a number  
20 of years and, in fact, were involved in, at least, four  
21 other litigation cases involving the two partners. Three  
22 of which pending -- or two of which pending in -- in  
23 Greenville County, one pending in Oconee County. And,  
24 subsequently, there's another case that Mr. Hedges filed  
25 against my client in North Carolina.

1           Importantly, Your Honor, that case was filed after we  
2           filed this case that you -- that you saw in the complaint.  
3           Opposing Counsel does not -- not represent them in that  
4           case. But Jeffrey Hedges did sue our client in North  
5           Carolina, we believe, in retaliation after filing this  
6           complaint, Your Honor.

7           And as you'll note in the complaint, all of our  
8           claims are equitable claims for the most part, unjust  
9           enrichment, promissory estoppel, a SCUTPA claim, and fraud  
10          and misrepresentation. You'll note in our complaint and,  
11          very specifically, the reason why we did not include it in  
12          our breach of contract claim is because this is not a  
13          breach of contract case.

14          Opposing Counsel wants to make it seem as though it's  
15          a breach of contract case and apply that independent  
16          contractor agreement and all the provisions in it. But  
17          it's not a breach of contract case. That's never been  
18          pled. There's no reference to breach of contract. So  
19          we're not saying that that contract governs the  
20          relationship between the parties.

21          In fact, and even as opposing Counsel notes, Your  
22          Honor, there was a termination of that contract. And  
23          we -- and we reference that in our complaint. On  
24          April 1st, 2019, our clients signed the termination  
25          agreement that ended the relationship between the parties

1 as it relates to that contract.

2 You'll see that in our -- in our complaint and in  
3 our -- in our brief, subsequently, we make the argument,  
4 Your Honor, that the majority of the damages that we  
5 believe were caused to our client arose after the contract  
6 was terminated. And we have reason to believe, Your  
7 Honor, and evidence that we would be happy to provide in  
8 discovery, to the extent we're allowed to participate in  
9 discovery in this case, that our client was induced or  
10 was -- the facts were misrepresent -- misrepresented to  
11 him about what the relationship of the parties would be  
12 moving forward.

13 There's, also, a document, Your Honor, that, of  
14 course, we will provide in discovery where our client  
15 signed as a member of JH3 Consulting. And there's an  
16 e-mail, at least, that I have that says, Please sign on  
17 behalf of JH3 Consulting. And, of course, this is all  
18 after April 1st, 2019.

19 So what we're arguing, Your Honor, is that these --  
20 the relationship between the parties changed after  
21 April 1st of 2019. Opposing Counsel wants to make it seem  
22 as though the contractor services we referenced would --  
23 would trigger that provision in the ICA agreement that  
24 we're talking about this morning. And, Your Honor, we do  
25 not dispute at all if that was a valid enforceable

1 contract. It absolutely was. This is all after that  
2 relationship ended.

3 And so, Your Honor, we don't believe that there's any  
4 reason to send this to arbitration at all. We will  
5 absolutely mediate this case. And we'd be happy to do so  
6 after we complete discovery.

7 Part of the problem in this case, Your Honor, as it's  
8 an -- an equitable case and an Unfair Trade Practices Act  
9 is we don't know all the facts. And we have been kicked  
10 out of the accounts as of 2020 from JH3 Consulting. My  
11 client has no access to the business records any more.  
12 And that we're going to need to engage in discovery in  
13 order to determine everything that happened post-2019.

14 We have reason to believe that our clients owed a  
15 significant amount of money. And by participating in  
16 arbitration, Your Honor, we believe the Defendants are  
17 attempting to skirt the discovery process and not allow us  
18 to get all the documents that we need.

19 I would -- I would just state for the record that,  
20 you know, the discovery rules in arbitration are much more  
21 limited than in state court. And that's part of the  
22 reason why we would like to be in state court, Your Honor,  
23 is because we'd like to participate in discovery.

24 Again, we will absolutely mediate after discovery  
25 happens. But we would prefer the case stay here in state

1 court.

2 THE COURT: All right. Anything in reply?

3 MR. GRAVES: Your Honor, I would just make a few  
4 notes. One, the long relationship between the parties  
5 that Plaintiff's Counsel referenced would, in fact,  
6 support our significant relationship that I'm talking  
7 about, as far as the initial contract and agreement that  
8 was entered into that contains the provision, and then  
9 afterwards the conduct -- conduct that continued.

10 Also, the -- the fact that they tried to --

11 THE COURT: Let me ask you -- I don't mean to cut you  
12 off, Counsel, but --

13 MR. GRAVES: Yes, sir.

14 THE COURT: -- show me -- Counsel brought up an  
15 interesting point. And I read the complaint.

16 MR. GRAVES: Yes, Your Honor.

17 THE COURT: Show me specific language in the  
18 complaint that you can characterize that says a breach of  
19 contract action, which would trigger the independent  
20 agreement. Show me in the complaint filed language that  
21 would support your argument that it's a breach of contract  
22 action.

23 MR. GRAVES: Your Honor, I -- I'm not making that  
24 representation at all. I don't think that we need the  
25 breach of contract in order to enforce an arbitration

1 agreement that's contained in a -- in a contract that was  
2 entered into between the two parties.

3 THE COURT: Well, hold on. Hold on one second. Hold  
4 on.

5 MR. GRAVES: Yes, Your Honor.

6 THE COURT: Hold on. Let me go back. I'm reading  
7 this -- I'm reading this -- in this independent contractor  
8 agreement.

9 MR. GRAVES: Yes, Your Honor.

10 THE COURT: And it would appear from my reading of  
11 the language -- and I'm looking at the one two, three,  
12 four -- leading up into the language about the independent  
13 contractor. I'm -- I'm not there with you yet.

14 So I don't --

15 MR. GRAVES: Yes, Your Honor.

16 THE COURT: I -- go ahead.

17 MR. GRAVES: I would just focus on the fact that  
18 the -- the provision included in the contract, the  
19 mediation and arbitration provision notes any and all  
20 disputes. It doesn't limit the claims that can be brought  
21 under that -- to enforce that arbitration provision. It's  
22 just broad and states --

23 THE COURT: Show -- show -- show me where it says any  
24 and all disputes.

25 MR. GRAVES: Yes, Your Honor. In Paragraph 13, it's

1 Page 4 of the agreement, the first sentence notes, The  
2 parties agree that all disputes that relate to or arise  
3 from the relationship. That's the language that I'm  
4 referencing, Your Honor.

5 THE COURT: It's a little stretch. But go ahead.  
6 That's what -- that's what you're -- that's what you're  
7 relying on?

8 MR. BROGDON: Yes, Your Honor. If I may clarify as  
9 well. As I stated, we are explicitly stating that the  
10 relationship as contractor and company ended in April of  
11 2019.

12 So I understand that this is a very, very broad  
13 arbitration clause. But by way of hypothetical, let's say  
14 I worked at Home Depot and I had an employment agreement  
15 that had an arbitration clause. Does that prevent me 30  
16 years down the road from bringing a claim because I have  
17 to go to arbitration? It's kind of our -- our take is  
18 that, you know, this would -- opposing Counsel wants to  
19 make it seem as though this would apply to every single  
20 thing that would ever happen between the parties. It  
21 would have to go to arbitration. And that's just not the  
22 case here.

23 MR. GRAVES: Your Honor, if I may. I -- I'm,  
24 actually, focused on the contractor services as pled in  
25 the complaint. And they define that term and it states,

1 Per the terms of the contract, which is the contract that  
2 they are talking about, it is the independent contractor  
3 agreement -- Wilson, Plaintiff, would recruit new clients  
4 and provide on boarding support and assistance to these  
5 clients. And they -- they define that as the contractor  
6 services.

7 Then throughout the complaint, even after the  
8 termination, they still reference contract services, the  
9 defined term, as the services that client would -- or that  
10 Plaintiff was providing. And they expressly use that term  
11 in the claims that they've brought.

12 Count one, the -- the unjust enrichment notes,  
13 Plaintiff provided the contractor services to the  
14 Defendant, the defined term. And then under promissory  
15 estoppel, again, reasonably relied upon that promise by  
16 continuing to provide the contractor services, the defined  
17 term again.

18 And so I would note that that would be the dispute  
19 that is covered by this mediation arbitration provision.

20 THE COURT: Yeah. But you're asking for a 12(b)(6)  
21 dismissal; is that right, in the complaint?

22 MR. GRAVES: 12(B)(1).

23 THE COURT: (B)(1) and --

24 MR. GRAVES: Yes, sir. And it would be because the  
25 venue is not proper here, Your Honor. And I think that

1 the six is included there because I don't think that  
2 you -- there's nothing that can be awarded because it  
3 shouldn't be in this venue.

4 And I know there's some discussion as to whether it  
5 should be a motion to dismiss, a motion to stay, and --  
6 and those different terms. But the purpose being it's not  
7 supposed to be in this venue. It should be in  
8 arbitration, per the terms of the agreement, Your Honor.

9 THE COURT: Okay. Anything else?

10 MR. BROGDON: No, Your Honor. I think we're good  
11 this morning.

12 THE COURT: All right. I think it's pretty clear in  
13 my -- in my -- in my purview looking at the motion to  
14 dismiss -- even if -- your argument about this being not  
15 the venue and looking at Subsection 3 of 12(B)(3) and (6),  
16 I -- I'm not inclined to -- I'm not inclined to grant your  
17 motion to dismiss. And I'm, also, not inclined to grant  
18 your motion to force arbitration. I'm not going to order  
19 that the parties participate in mediation.

20 I think the two of you are smart enough to know that  
21 you should do that. I mean, I don't need to tell you to  
22 do that.

23 But I'm going to deny -- and I think those are the --  
24 and I think the -- I don't really think I need to get to  
25 the whole issue of staying discovery because I'm not

1 even -- I'm going to let it stay in state court. So you  
2 all can engage in discovery as soon as you possibly can.

3 So we don't even get to that -- that portion of the  
4 motion, based on my -- my ruling that I'm going to -- you  
5 know, I looked at the complaint. And I -- I think that --  
6 that Counsel -- Plaintiff's Counsel makes a valid  
7 argument.

8 And so I -- I -- I will do a Form 4, unless you  
9 guys -- you want a formal order. Sometimes, lawyers who  
10 are fighting each other viciously want a formal order.  
11 But -- but if y'all are not the vicious type lawyers  
12 fighting each other, we can do a Form 4.

13 What do you prefer?

14 MR. BROGDON: That would be fine with me, Your Honor.

15 THE COURT: A Form 4?

16 MR. GRAVES: No objection, Your Honor.

17 THE COURT: A Form 4, Counsel?

18 MR. GRAVES: Yes. Yes, Your Honor.

19 THE COURT: All right. I'll do a Form 4.

20 \*\*\*\*\*END OF TRANSCRIPT OF RECORD\*\*\*\*\*

21

22

23

24

25

CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA            )  
COUNTY OF GREENVILLE            )

I, HOLLIE JENKINS, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of the proceedings had and the evidence introduced in the captioned case, relative to appeal, in the Court of General Sessions for Greenville County, South Carolina, on the 16th day of September, 2021.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

October 21, 2021

A handwritten signature in black ink that reads "Hollie M. Jenkins". The signature is written in a cursive style and is positioned above a horizontal line.

Hollie M. Jenkins, Court Reporter

STATE OF SOUTH CAROLINA  
COUNTY OF GREENVILLE

Jeremy Wilson,

Plaintiff,

v.

JH3 Consulting, LLC and Jeffrey G.  
Hedges,

Defendants.

IN THE COURT OF COMMON PLEAS  
FOR THE THIRTEENTH JUDICIAL  
CIRCUIT

Case No.: 2021-CP-23-02564

**DEFENDANTS’ NOTICE OF MOTION  
AND MOTION TO DISMISS AND / OR  
STAY AND COMPEL MEDIATION AND  
ARBITRATION**

PLEASE TAKE NOTICE Defendants JH3 Consulting, LLC and Jeffrey G. Hedges (“Defendants”) hereby move this Honorable Court, pursuant to South Carolina Rules of Civil Procedure 12(b)(1), (3), and (6), for an order dismissing and/or staying this action and compelling Plaintiff Jeremy Wilson (“Plaintiff”) to submit all claims in this action to mediation and arbitration as such claims are subject to mediation and binding arbitration under the express terms of the Independent Contractor Agreement (the “Agreement”). See Exhibit A, Independent Contractor Agreement at 5. Specifically, Paragraph 13 of the Agreement provides the following:

13. Mediation and Arbitration. The Parties agree that all disputes that relate to or arise from the relationship between the Contractor and the Company shall first be submitted to mediation. If mediation is unsuccessful, the Parties agree that such disputes shall be resolved through binding arbitration conducted in accordance with the rules of the American Arbitration Association which are then in effect. The arbitrator's decision shall be final and binding, without the right of appeal. Any party may seek to have judgment entered upon the award by a court of competent jurisdiction. The cost of mediation and/or arbitration shall be the joint responsibility of the Parties. Everything related to the mediation and/or arbitration, including without limitation, discovery, the hearing, the record of the proceeding and communications and correspondence regarding the proceeding are confidential and shall not be open or disclosed to any third party or the public except to the extent both parties agree otherwise in writing. The parties understand and agree that their only remedy for any dispute covered by this Agreement shall be through binding arbitration, and that they cannot proceed with such a dispute in court or any similar forum.

*Id.* Accordingly, this Court should dismiss and/or stay this action and compel Plaintiff to submit all claims to mediation and arbitration pursuant to Paragraph 13 of the Agreement.

This Motion is further supported by the pleadings, applicable law, arguments of counsel, a memorandum of law to be filed subsequently, and any other documents, affidavits or materials the Court may receive prior to a hearing on the same.

Respectfully Submitted,

**GRAVES & DAVIS, LLC**

s/S. Tyler Graves

S. Tyler Graves, Esquire

SC Bar No.: 103173

Logan S. Davis, Esquire

SC Bar No.: 104429

125E Wappoo Creek Dr., Ste. 102

Charleston, South Carolina 29412

P: 843-805-4649

F: 843-620-1047

[tgraves@gravesdavis.com](mailto:tgraves@gravesdavis.com)

[ldavis@gravesdavis.com](mailto:ldavis@gravesdavis.com)

*Attorneys for Defendants*

Charleston, South Carolina  
August 25, 2021

## INDEPENDENT CONTRACTOR AGREEMENT

THIS INDEPENDENT CONTRACTOR AGREEMENT is made and entered into on the 22<sup>nd</sup> day of November, 2017 ("Effective Date"), by and between JH3 CONSULTING, LLC, a North Carolina limited liability company (hereinafter referred to as the "Company"), and Jeremy Wilson (hereinafter referred to as the "Contractor"). The Company and Contractor are sometimes collectively referred to herein as the "Parties").

### RECITALS

**WHEREAS**, the Company is engaged in the business of providing consulting and management services to multi-disciplinary medical clinics ("Clients"); and

**WHEREAS**, the Company desires to engage the Contractor as an independent contractor in an executive role for the purpose of assisting the Company in teaching, recruiting, establishing and opening Clinics in accordance with the terms and conditions contained herein; and

**WHEREAS**, the Contractor has advised the Company of his willingness, ability, and desire to accept the engagement and to perform the Services in accordance with the following terms and conditions;

**NOW THEREFORE**, in consideration of the premises and the mutual covenants and conditions contained herein, the Company hereby engages the Contractor to render the Services described herein as an independent contractor of the Company as more particularly set forth as follows:

1. **Independent Contractor.** The Parties hereby agree that the relationship of the Contractor to the Company is one of independent contractor. The Contractor is not an employee of the Company and is not entitled to the rights or benefits afforded to the Company's employees, including disability or unemployment insurance, worker's compensation, medical insurance, sick leave, or any other employment benefit. The Contractor shall maintain and pay all federal, state, and local disability, unemployment, worker's compensation, and other insurance, training, permits, and licenses on Contractor's own behalf. The Contractor acknowledges that he is solely responsible for paying all federal, state, and local payroll taxes, self-employment insurance, and income and other taxes. The Company shall not withhold or pay any federal, state, or local disability, worker's compensation, payroll taxes, self-employment insurance, or income or other taxes on behalf of Contractor. The Company shall issue a Form 1099 to the Contractor with respect to all fees paid to the Contractor under this Agreement. It is the intention of the Parties that for tax purposes, the Contractor shall be treated as an independent contractor in accordance with Section 3508 of the Internal Revenue Code of 1986, as amended (the "Code").

2. **Engagement and Duties.** During the Term of this Agreement and any renewals thereof, the Contractor shall devote his attention, abilities, and best efforts in the performance of



- (a) Assisting the Company in recruiting Clients;
- (b) Assisting and being present for all openings of Clinics;
- (c) Assisting the Company in providing support and assistance to Clients; and
- (d) All other duties that may be assigned by the Company from time to time.

The Contractor shall determine the method, details, and means of performing the above-described Services, however, Contractor agrees to perform such Services in a manner consistent and compliant with all Company rules, policies and procedures.

3. Weekly Obligations. Contractor shall make himself reasonably available to Clients for any and all support or assistance needed.

- (a) Client Support- Contractor shall contact Clients at least twice per week to address any questions or concerns posed by the Clients.
- (b) Weekly Reports- Contractor shall provide weekly summaries or reports to Dr. Jeffrey Hedges regarding the status of current Clients and Contractor's progress and attempts to recruit additional Clients.

4. Compensation. The Company will collect twenty percent (20%) of the gross collections of each Client and Contractor shall receive compensation in an amount equal to forty percent (40%) of those collections NET from each Client to whom the Contractor has provided assistance for Twelve (12) months. Said compensation shall be paid on a monthly basis in accordance with the Company's standard payroll procedures and cycles. The final amount to be paid to the Jeremy Wilson will be after normal operating expenses and taxes are PAID estimated to be at or around Five thousand dollars (5,000.00).

5. Term and Termination. The term of this Agreement shall commence on the Effective Date hereof and shall remain in effect until terminated as hereinafter provided. This Agreement may be terminated by the Parties as follows:

- (a) Upon the occurrence of any of the following events of default, the Company may terminate this Agreement effective immediately upon notice to the Contractor. These rights are cumulative and are in addition to any other rights and remedies which the Company may have against the Contractor. The following shall be considered events of default:
  - (i) The Contractor's failure to comply with any of the Company's rules, policies or procedures.
  - (ii) The Contractor's refusal or failure to perform any of his obligations under this Agreement or violation of the terms of this Agreement.



- (iii) The Contractor's engagement in any act of dishonesty or misconduct in connection with the performance of his obligations or Services pursuant to this Agreement.
  - (iv) The Contractor's engagement in any acts or course of conduct which, in the Company's sole discretion, is derogatory, demeaning, or otherwise harmful to the Company, including, without limitation, false statements regarding the Company, its employees, officer, and/or agents.
  - (v) The occurrence of any event which would cause the Contractor's performance of his duties hereunder to violate any state, federal, or local law or regulation, or local ordinance.
  - (vi) The Contractor's conviction of or entrance of a plea of guilty or nolo contendere to a felony or other crime which has or may have a material adverse effect on his ability to carry out the Services
- (b) This Agreement may be terminated upon 7 days written notice from the Company due to Contractors poor performance including but not limited to Contractor's failure to generate collections, recruitments, and upon receipt of legitimate complaints from the Clients;
  - (b) This Agreement may be terminated, for any reason, by either Party upon 30 days written notice to the other;
  - (c) This Agreement shall terminate upon the death of the Contractor or upon the Contractor becoming disabled such that he can no longer perform the Services;
  - (d) This Agreement may be terminated by mutual written agreement of the Parties;
  - (e) This Agreement shall terminate immediately in the event there is a transfer of ownership in the Company; or
  - (f) This Agreement shall terminate immediately in the event the Company ceases its operation.

6. General Liability Insurance. The Contractor hereby acknowledges, understands, and agrees that the Company will not provide liability insurance or worker's compensation insurance for the Contractor. The Contractor also acknowledges, understands, and agrees that he is not an employee of the Company and, as such, the Company will not provide health insurance coverage for the Contractor nor will the Contractor be a participant of the Company's group health plan or any Company group health plan mandated by the Patient Protection and Affordable Care Act.

R&s 1500529J



7. Expenses. The Contractor shall not be reimbursed for any expenses, unless approved in advance by the Company, it being the intention of the Parties that the compensation paid to the Contractor is inclusive of any expenses incurred by the Contractor.

8. Confidentiality. The Contractor acknowledges that his contract with the Company will result in the Contractor acquiring and/or being exposed to information that is or will be confidential and proprietary to the Company. Said information includes, but is not limited to, client lists, marketing plans, pricing data, product plans, software, proprietary technology, and other intangible information such as methods and techniques for recruiting, managing, and providing support and assistance to Clients through software or otherwise (collectively "Confidential Information"). Such Information shall be deemed confidential to the extent it is not generally known within the trade. The Contractor agrees to make use of such information only in the performance of his duties under this Agreement, to maintain such information only in the performance of his duties under this Agreement, to maintain such information in confidence and to disclose the information only to persons with a reasonable need to know. Upon termination of this Agreement, the Contractor agrees to promptly deliver to the Company all documents and/or other materials containing such Confidential Information, and any and all copies or reproductions thereof.

9. Non-Competition. Contractor acknowledges and agrees that during the Term of this Agreement and for three (3) years following termination of this Agreement for any reason ("Restrictive Period"), Employee shall not, without the express prior written consent of the Company, directly or indirectly, engage in a "Competitive Activity" within a county or parish in which the Company operates or maintains Clients. The term "Competitive Activity" shall mean engaging or contracting to perform consulting or other management services to Clients.

10. Non-Solicitation. Contractor acknowledges and agrees that during the Restrictive Period, Contractor will not, either for Contractor's benefit or for the benefit of any other person or entity, directly or indirectly, solicit any of the Company's Clients, recruits, employees, or contractors to terminate their relationship with the Company or leave the Company's services for any reason.

11. Remedies upon Breach. The Parties acknowledge that the performance of the promises of each are expressly contingent upon the fulfillment and satisfaction of the obligations set forth in this Agreement. It is expressly agreed between the Parties that a violation of the provisions contained in paragraphs 8, 9, and 10 by the Contractor would cause irreparable harm to the Company, and a remedy at law would be inadequate. The Contractor agrees that he may be enjoined from the use or disclosure of Confidential Information, and/or engagement in Competitive Activity or Solicitation within the Restrictive Period by any court of competent jurisdiction. Nothing in this Agreement shall be construed as preventing the Company from pursuing any and all other remedies available to the Company for breach or threatened breach of this Agreement, including claims for damages

12. Liquidated Damages. As a further material inducement to the Company to enter this Agreement, Contractor agrees that, in addition to any and all remedies available to the



company based upon this Agreement, Contractor will immediately pay the sum of Five Hundred Thousand Dollars (\$500,000.00) to the Company as and for liquidated damages if the Contractor violates the provisions contained in paragraphs 8, 9, and/or 10 above. The Parties acknowledge that damages would be substantial but difficult to determine and therefore believe that such amount is a reasonable estimate of such damages and is not imposed as a penalty. Company shall have the immediate right to offset and apply all monies due to the Contractor under this Agreement against the aforesaid liquidated damages. Contractor acknowledges that the aforementioned liquidated damages may not adequately compensate the Company for its damages in the event of a violation of the provisions contained in paragraphs 8, 9, and 10, and not withstanding said liquidated damages, the Company may, in addition to the liquidated damages seek injunctive relief for such violations as provided in paragraph 11 above.

13. Mediation and Arbitration. The Parties agree that all disputes that relate to or arise from the relationship between the Contractor and the Company shall first be submitted to mediation. If mediation is unsuccessful, the Parties agree that such disputes shall be resolved through binding arbitration conducted in accordance with the rules of the American Arbitration Association which are then in effect. The arbitrator's decision shall be final and binding, without the right of appeal. Any party may seek to have judgment entered upon the award by a court of competent jurisdiction. The cost of mediation and/or arbitration shall be the joint responsibility of the Parties. Everything related to the mediation and/or arbitration, including without limitation, discovery, the hearing, the record of the proceeding and communications and correspondence regarding the proceeding are confidential and shall not be open or disclosed to any third party or the public except to the extent both parties agree otherwise in writing. The parties understand and agree that their only remedy for any dispute covered by this Agreement shall be through binding arbitration, and that they cannot proceed with such a dispute in court or any similar forum.

14. Optional Buy-out Provision. Company may, in its discretion, elect to give Contractor the option to purchase contract(s) held by the Company to provide services to Clients ("Buy-out"). In exchange for assignment of such contracts, Contractor shall pay an amount equal to three (3) percent of the total amount of collections received by the Company from the Client. Such Buy-out shall be consummated in a separate writing. Nothing herein requires the Company to notify the Contractor of the termination of any contract with its Client, nor is the Company obligated to give Contractor the first right of refusal before selling or assigning such contracts. Nothing herein requires or mandates that Company offer Buy-outs to the Contractor and the Company may elect not to offer such Buy-outs for any reason.

15. Amendment. No amendment, modification, or termination of, or addition to, this Agreement shall be valid unless and until executed in writing by the Parties to this Agreement.

16. Severability. If any provision(s) set forth in this Agreement is held to be invalid or unenforceable by any court of competent jurisdiction, such provision(s) shall be severed and the remainder of this Agreement shall remain valid and enforceable.

17. Assignment. This Agreement may not be assigned by the Contractor without the prior written consent of the Company and any attempted assignment in violation hereof shall be

R&s 1500529J



void. This Agreement may be assigned by the Company to any successor or affiliate of the Company.

18. Notice. Any notice, demand, request, consent, approval, or communication that either Party desires or is required to give to the other Party or any other person shall be in writing and either served personally or sent by prepaid, certified mail, return receipt requested, or by overnight carrier obtaining a receipt. For such purposes, the addresses set forth below shall be used. Either Party may change its address by giving Notice to the other Party of such change. Notice shall be deemed effective upon receipt, if made by personal delivery or overnight carrier obtaining a receipt, or three days after deposit in the United States Mail.

**Company:**

JH3 Consulting, LLC  
Attention: Dr. Jeffrey G. Hedges  
170 S Willow Brook Dr  
Asheville NC 28806

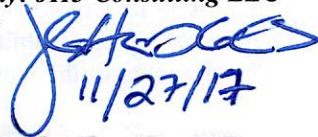
**Contractor:**

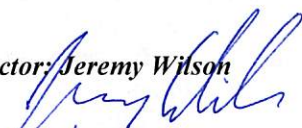
Jeremy Wilson  
1 Wiscasset Way  
Greenville, SC 29615

19. Entire Agreement. This Agreement is the exclusive agreement of the Parties hereto with respect to the subject matter hereof.

20. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of North Carolina.

**IN WITNESS WHEREOF**, the Parties hereto have executed this Agreement to be effective the day and year first written above.

Company: JH3 Consulting LLC  
NAME:   
Date: 11/27/17

Contractor: Jeremy Wilson  
Name:   
Date: 11/22/17

STATE OF SOUTH CAROLINA  
COUNTY OF GREENVILLE

Jeremy Wilson,

Plaintiff,

v.

JH3 Consulting, LLC and Jeffrey G.  
Hedges,

Defendants.

IN THE COURT OF COMMON PLEAS  
FOR THE THIRTEENTH JUDICIAL  
CIRCUIT

Case No.: 2021-CP-23-02564

**DEFENDANTS' MEMORANDUM IN  
SUPPORT OF THEIR MOTION AND  
MOTION TO DISMISS AND/OR STAY  
AND COMPEL MEDIATION AND  
ARBITRATION**

Defendants JH3 Consulting, LLC (“JH3”) and Jeffrey G. Hedges (“Dr. Hedges”) (collectively, “Defendants”), by and through their undersigned counsel, hereby submit the following Memorandum in Support of their Motion to Dismiss and/or Stay and Compel Mediation and Arbitration (the “Motion”), which was filed on August 25, 2021.

**INTRODUCTION**

Plaintiff Jeremy Wilson (“Plaintiff”) filed his Complaint on May 27, 2021, which includes claims for: (1) unjust enrichment; (2) promissory estoppel; (3) violation of the South Carolina Unfair Trade Practices Act; and (4) fraud and misrepresentation. Pl.’s Compl. at ¶¶ 30-53. In short, Plaintiff’s claims relate to his relationship with Defendants and the alleged failure by Defendants to compensate Plaintiff for services he provided as an independent contractor. *See generally*, Pl.’s Compl. at ¶¶ 7-29. Relevant to this Motion, Plaintiff entered into an Independent Contractor Agreement (the “Agreement”) on November 22, 2017, in order to work as an independent contractor for JH3. *Id.* at ¶ 10; *see also*, Exhibit A, Independent Contractor Agreement. The Agreement was subsequently entered into by Dr. Hedges on behalf of JH3 on November 27, 2017. *Id.* at ¶ 13. Of great significance to this Motion, Paragraph 13 of the

Agreement includes a “Mediation and Arbitration” provision. *See* Exhibit A, Independent Contractor Agreement at p. 4. In full, the “Mediation and Arbitration” provision reads as follows:

13. **Mediation and Arbitration.** The Parties agree that all disputes that relate to or arise from the relationship between the Contractor and the Company shall first be submitted to mediation. If mediation is unsuccessful, the Parties agree that such disputes shall be resolved through binding arbitration conducted in accordance with the rules of the American Arbitration Association which are then in effect. The arbitrator's decision shall be final and binding, without the right of appeal. Any party may seek to have judgment entered upon the award by a court of competent jurisdiction. The cost of mediation and/or arbitration shall be the joint responsibility of the Parties. Everything related to the mediation and/or arbitration, including without limitation, discovery, the hearing, the record of the proceeding and communications and correspondence regarding the proceeding are confidential and shall not be open or disclosed to any third party or the public except to the extent both parties agree otherwise in writing. The parties understand and agree that their only remedy for any dispute covered by this Agreement shall be through binding arbitration, and that they cannot proceed with such a dispute in court or any similar forum.

*Id.* When Plaintiff executed the Agreement, he expressly agreed to the “Mediation and Arbitration” provision which sets forth its scope in pertinent parts as follows: “***all disputes that relate to or arise from the relationship between the Contractor and the Company*** shall first be submitted to mediation...[and, if mediation is unsuccessful,] such disputes shall be resolved through binding arbitration[.]”<sup>1</sup> *Id.*

Notwithstanding this prior agreement, Plaintiff now seeks to circumvent or breach the “Mediation and Arbitration” provision included in the Agreement and proceed with litigation. However, this simply should not be allowed. As discussed in detail below, this Court should enforce the “Mediation and Arbitration” provision included in the Agreement and compel mediation and arbitration in accordance with the terms set forth in the Agreement.

---

<sup>1</sup> Of note, the focus of Defendants’ arguments is on the enforcement of arbitration as Defendants recognize that mediation is required under South Carolina law. Nonetheless, Defendants would note that this case should first be mediated and, if unsuccessful, resolved via binding arbitration as set forth in the Agreement.

## LEGAL DISCUSSION & ARGUMENT

### **I. THE “MEDIATION AND ARBITRATION” PROVISION MUST BE ENFORCED BY THIS COURT.**

At the onset, Defendants note that there is a strong presumption in favor of the validity of arbitration agreements because both state and federal courts favor arbitration of disputes. *Towles v. United Healthcare Corp.*, 338 S.C. 29, 34, 524 S.E.2d 839, 842 (Ct. App. 1999). Of note, the Supreme Court has repeatedly underscored the “emphatic federal policy in favor of arbitral dispute resolution” embodied in the Federal Arbitration Act (“FAA”). *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614, 631 (1985); *see also, e.g., AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 339 (2011). Underlying this policy is Congress’s view that arbitration constitutes a more efficient dispute resolution process than litigation. *See Brantley v. Republic Mortgage Ins. Co.*, 2004 U.S. Dist. LEXIS 28831 (D.S.C. 2004), *aff’d* 424 F.3d 393 (4th Cir. 2005); *see also Hightower v. GMRI, Inc.*, 272 F.3d 239, 241 (4th Cir. 2001) (same). Thus, “due regard must be given to the federal policy favoring arbitration, and ambiguities as to the scope of the arbitration clause itself must be resolved in favor of arbitration.” *Brantley* at 5 (quoting *Volt Info. Sciences, Inc. v. Bd. of Tr. of Leland Stanford Jr. Univ.*, 489 U.S. 468, 475-76, 109 S. Ct. 1248, 103 L. Ed. 2d 488 (1989)); *see also Towles*, 338 S.C. at 41, 542 S.E.2d at 846 (stating South Carolina courts “must address questions of arbitrability with a healthy regard for the federal policy favoring arbitration”).

The United States Court of Appeals for the Fourth Circuit has gone as far as to say that motions to compel arbitration “should not be denied unless it may be said with positive assurance that the arbitration [agreement] is not susceptible of an interpretation that covers the asserted dispute.” *Peoples Sec. Life Ins. Co. v. Monumental Life Ins. Co.*, 867 F.2d 809, 812 (4th Cir. 1989) (quoting *United Steelworkers of Am. v. Warrior & Gulf Navigation Co.*, 363 U.S. 574, 582-83, 80

S. Ct. 1347, 4 L. Ed. 2d 1409 (1960)). The clear language of the FAA is not permissive but instead mandates enforcement of arbitration agreements. Section 4 of the FAA provides in pertinent part as follows:

The court shall hear the parties, and upon being satisfied that the making of the agreement for arbitration or the failure to comply therewith is not in issue, the court *shall* make an order directing the parties to proceed to arbitration in accordance with the terms of the agreement.

9 U.S.C. § 4 (emphasis added). Thus, by its terms, the FAA mandates that parties must arbitrate where there is a signed agreement to do so. *See Dean Witter Reynolds, Inc. v. Byrd*, 470 U.S. 213, 218 (1985).

Also, the United States Supreme Court reaffirmed its commitment to arbitration under the FAA, admonishing a state supreme court for refusing to enforce an arbitration clause. *See Marmet Health Care Center, Inc., et al., v. Brown*, 565 U.S. 530, 132 S.Ct. 1201, 1203-04, 182 L. Ed. 2d 42 (2012) (holding from the outset that “State and Federal courts must enforce the Federal Arbitration Act”). In *Marmet*, the Supreme Court held that arbitration agreements for a resident’s claim of personal injury are enforceable and wholly preempt a state’s public policy to the contrary. *Id.* at 532-33. The Court held that West Virginia’s judicial policy of refusing to enforce arbitration agreements made between residents and a nursing facility where they resided was both “incorrect” and “inconsistent with clear instruction in the precedents of this Court.” *Id.* at 532. In making its ruling that the FAA preempts West Virginia’s policy, the Supreme Court added, “[t]he [the FAA’s] text includes no exception for personal-injury or wrongful-death claims. It requires courts to enforce the bargain of the parties to arbitrate.” *Id.* Respectfully, this Court has an obligation to enforce the “Mediation and Arbitration” provision included in the Agreement entered into by

Plaintiff and Defendants, as they expressly agreed to mediation and arbitration involving any disputes between the parties.

The FAA provides that written arbitration agreements “shall be valid, irrevocable, and enforceable, save upon grounds as exist at law or in equity for the revocation of any contract.” 9 U.S.C. § 2. A party aggrieved by another’s failure to follow such an agreement may petition a court to order that arbitration to proceed. *Id.* § 4. If issues in a pending suit are referable to arbitration, a court “shall on application of one of the parties stay the trial of the action until such arbitration has been had in accordance with the terms of the agreement.” *Id.* § 3. A party seeking to compel arbitration must establish: ““(1) the existence of a dispute between the parties, (2) a written agreement that includes an arbitration provision which purports to cover the dispute, (3) the relationship of the transaction, which is evidenced by the agreement, to interstate or foreign commerce, and (4) the failure, neglect or refusal of the defendant to arbitrate the dispute.”” *Am. Gen. Life & Accident Ins. Co. v. Wood*, 429 F.3d 83, 87 (4th Cir. 2005) (quoting *Adkins v. Labor Ready, Inc.*, 303 F.3d 496, 500-01 (4th Cir. 2002)).

Each of the elements noted above are satisfied in this case. But, if there were any doubt, “the heavy presumption of arbitrability requires that when the scope of the arbitration clause is open to question, a court must decide the question in favor of arbitration.” *Peoples Sec. Life Ins. Co. v. Monumental Life Ins. Co.*, 867 F.2d 809, 812 (4th Cir. 1989). As discussed below, there is a signed Agreement and the claims arise within the scope of the “Mediation and Arbitration” provision included in the Agreement, which should lead this Court to enforce arbitration.

***A. Element 1 – Existence of a Dispute Between the Parties***

Plaintiff’s Complaint is evidence of a dispute between the parties. As such, no further discussion is necessary to satisfy this element.

**B. Element 2 – Agreement with an Arbitration Provision that Covers the Dispute**

The Agreement governing the relationship between Plaintiff and Defendants clearly requires that any dispute concerning the relationship be submitted to arbitration: “The Parties agree that *all disputes that relate to or arise from the relationship between Contractor and the Company shall first be submitted to mediation*. If mediation is unsuccessful, the Parties agree that *such disputes shall be resolved through binding arbitration* conducted in accordance with the rules of the American Arbitration Association which are then in effect.” See Exhibit A, Independent Contractor Agreement at p. 4.

The allegations in Plaintiff’s Complaint plainly fall within the scope of the “Mediation and Arbitration” provision included in the Agreement. The gravamen of the claims is related to the relationship between Plaintiff and Defendants and the Contractor Services that Plaintiff was providing under the Agreement. Specifically, the Complaint alleges that, pursuant to the Agreement, the parties agreed that Plaintiff would provide Contractor Services for JH3 in exchange for compensation. *Id.* at ¶¶ 14-16. The Complaint alleges that Plaintiff provided the Contractor Services described in the Agreement. *Id.* at ¶ 17. Further, the Complaint alleges that, in or around April 2019, Defendants began withholding payments that were due to Plaintiff under the Agreement. *Id.* at ¶ 19. Although the parties entered into a termination of the Agreement, the Complaint alleges that Plaintiff continued to provide the Contractor Services with the understanding that the parties would enter into a new agreement. *Id.* at ¶¶ 21-24. Finally, Plaintiff alleges that Defendants have not paid Plaintiff for the Contractor Services that were provided.

It is evident that the allegations noted above directly “relate to or arise from the relationship” between Plaintiff and Defendants, which falls squarely within the scope of the “Mediation and Arbitration” provision that is included in the Agreement. Going further, the

“sweeping language of broad arbitration clauses” – such as the “Mediation and Arbitration” provision here – “applies to disputes in which a significant relationship exists between the asserted claims and the contract in which the arbitration clause is contained.” *Landers v. FDIC*, 739 S.E.2d 209, 214 (S.C. 2013). The Complaint here alleges what amounts to a consistent relationship between the parties over the course of a number of years. There is thus a “significant relationship” included in all of the allegations making the entire dispute subject to arbitration. The law and common sense alike dictate that the dispute over the common course of conduct be resolved in one proceeding, in a single forum, that being arbitration.

The “significant relationship” test requires a court to look at the factual allegations underlying the claims, regardless of their legal labels, and to “[b]ear[] in mind the strong federal policy in favor of arbitration.” *Am. Recovery Corp. v. Comput. Thermal Imaging, Inc.*, 96 F.3d 88, 93 (4th Cir. 1996). With a broad arbitration clause, “the test...is not whether a claim arose under one agreement or another, but whether a significant relationship exists between the claim and the agreement containing the arbitration clause.” *Id.* at 94. Thus, “[t]he scope of an arbitration clause in one contract can extend to a dispute arising under a second contract, provided that the dispute ‘significantly relates’ to the first agreement.” *Gen Elec. Capital Corp. v. Union Corp. Fin. Grp.*, 142 F. App’x 150, 152 (4th Cir. 2005). That test is satisfied here.

Courts have found that an arbitration clause may encompass more than claims arising under the terms of the specific contract containing it where the clause contains “broad” language like the provision here – “all disputes that relate to or arise from the relationship between Contractor and the Company.” *See Prima Paint Corp. v. Flood & Conklin Mfg. Co.*, 388 U.S. 395, 398 (1967) (labeling as “broad” a clause that required arbitration of “[a]ny controversy or claim arising out of or relating to this Agreement”); *Great Am. Ins. Co. v. Hinkle Contracting Corp.*, 497 F. App’x

348, 353 (4th Cir. 2012) (similar); *Whitaker v. Protective Life Ins. Co.*, No. 6:10-02314-HFF, 2011 WL 13217968 at \*3 (D.S.C. August 18, 2011) (“any controversy” language connotes a broad arbitration agreement). The “Mediation and Arbitration” provision relating to this Agreement fits that description precisely, requiring that “all disputes that relate to or arise from the relationship” between Plaintiff and Defendants be submitted to mediation and then arbitration.

And it is likewise clear that all of Plaintiff’s claims bear a significant relationship to the Agreement because the Complaint is centered around the Contractor Services and failure by Defendant to compensate Plaintiff for such Contractor Services. The Complaint fails to distinguish for purposes of liability between the Contractor Services provided under the Agreement and the Contractor Services provided after the termination of the Agreement. In fact, no distinction is made whatsoever between the Contractor Services that were provided under the Agreement and the Contractor Services provided after termination of the Agreement. One can only conclude that the same Contractor Services were provided at all times and are at issue in this case. As Plaintiff has pleaded his case, Defendants alleged misconduct arises from the same relationship between the parties. Thus, it bears a significant relationship to the subject matter of the Agreement that includes the “Mediation and Arbitration” provision.

Put simply, there can be no serious disagreement that the allegations and claims by Plaintiff do not fall within the scope of the Agreement as they clearly “related to or arise from the relationship” between Plaintiff and Defendants. Plaintiff has alleged a consistent, uniform relationship and seeks to hold Defendants liable for actions arising out of that relationship. Accordingly, the entirety of the Plaintiff’s claims fall within the scope of the “Mediation and Arbitration” provision and must be arbitrated together.

***C. Element 3 – Interstate or Foreign Commerce***

The parties’ dispute also easily satisfies the requirement that it “involv[e] commerce.” *See* 9 U.S.C § 2; *Am. Gen. Life & Accident Ins. Co.*, 429 F.3d at 87. The FAA “extend[s]...to the limits of Congress’ Commerce Clause power.” *Allied-Bruce Terminix Cos. v. Dobson*, 513 U.S. 265, 268 (1995). Thus, “an arbitration clause merely ‘affecting’ interstate commerce would be covered by the statute.” *THI of S.C. at Columbia, LLC v. Wiggins*, No. 3:11-888-CMC, 2011 WL 4089435, at \*1 n.3 (D.S.C. Sept. 13, 2011). That is manifestly so here, where a North Carolina limited liability company entered into an agreement involving contractor services with a South Carolina resident. Clearly, the actions between the parties would involve activities across state lines.

***D. Element 4 – Failure, Neglect, or Refusal to Arbitrate the Dispute***

As is similar to Element 1, Plaintiff’s assertion of multiple claims against the Defendants in this Court, rather than submitting those claims to mediation and arbitration, clearly shows Plaintiff’s failure, neglect, or refusal to arbitrate the dispute. Accordingly, no further discussion is necessary to satisfy this element.

Considering all of the elements are satisfied, this Court should submit Plaintiff’s claims to binding arbitration in accordance with the terms of the Agreement.

**II. THE AGREEMENT IS BINDING AND ENFORCEABLE.**

Arbitration is a matter of contract law and is available only when the parties involved contractually agreed to arbitrate. *Towles*, 338 S.C. at 37, 524 S.E.2d at 843-44. General contract principles of state law apply in a court’s evaluation of the enforceability of an arbitration clause. *Munoz v. Green Tree Financial Corp.*, 535 S.C. 531, 539, 542 S.E.2d 360, 364 (2001). Thus, a party may seek revocation of the contract under such grounds as exist at law or in equity, including fraud, duress, and unconscionability. However, none of those exist in this case.

Under South Carolina law, the Agreement in this case is an enforceable contract supported by mutual assent. First, the Agreement has all of the necessary and familiar elements that create a valid and enforceable contract. It contains offer, acceptance, signatures evincing the intention of the parties to enter into the contract (a meeting of the minds), and consideration. *See Regions Bank v. Schmauch*, 354 S.C. 648, 582 S.E.2d 432 (Ct. App. 2003) (stating “another way, there must be an offer and an acceptance accompanied by valuable consideration”).

Of note, under South Carolina law, a person who signs a contract or other written document cannot avoid the effect of the document by claiming he did not read it. *See Regions Bank*, at 354 (internal citations omitted). A person signing a document is responsible for reading the document and making sure of its contents. *Id.* Every contracting party owes a duty to the other party to the contract and to the public to learn the contents of a document before he signs it. *Id.* One who signs a written instrument has the duty to exercise reasonable care to protect himself. *See Maw v. McAlister*, 252 S.C. 280, 285, 166 S.E.2d 203, 205 (1969); *see also Evans*, 269 S.C. at 587, 239 S.E.2d at 77; *DeHart v. Dodge City of Spartanburg*, 311 S.C. 135, 139, 427 S.E.2d 720, 722 (Ct. App. 1993); *Jones v. Cooper*, 234 S. C. 477, 109 S.E.2d 5 (1959) (holding one entering into a written contract should read it and avail himself of every opportunity to understand its content and meaning). “[A]lthough the right to a trial by jury is a substantial right, and we ‘strictly construe’ such waivers, ‘[a] person who signs a contract or other written document cannot avoid the effect of the document by claiming that he did not read it.’” *Wachovia Bank v. Blackburn*, 407 S.C. 321, 332-3, 755 S.E.2d 437, 443 (2014) (internal citations omitted). Additionally, the law does not impose a duty on one party to an agreement to explain to the other party what he could learn from simply reading the document. *See Towles*, 338 S.C. at 29, 524 S.E.2d at 839; *see also Wachovia*,

407 S.C. at 333, 755 S.E.2d at 443 (holding the law does not require a bank to explain to an individual what he could learn from reading the document).

Here, Plaintiff had every opportunity to read over the Agreement and make an informed decision prior to entering into the same. After reviewing the Agreement, Plaintiff clearly agreed to the terms included therein as is evidenced by his signature on the final page. *See* Exhibit A, Independent Contractor Agreement at p. 5. There is absolutely no evidence of unconscionability, fraud, or duress present as it relates to the execution of the Agreement. Accordingly, there was a meeting of the minds as to the essential terms, including the “Mediation and Arbitration” provision, which produced an enforceable contract to arbitrate.

**III. ANY DISPUTES REGARDING THE ARBITRABILITY OF PLAINTIFF’S CLAIMS MUST THEMSELVES BE SUBMITTED TO ARBITRATION.**

Should Plaintiff resist arbitration for any or all of its claims against Defendants, any questions regarding scope of arbitrability must themselves be submitted to arbitration. It is settled that “parties may choose ‘to arbitrate gateway questions of arbitrability, such as whether the parties have agreed to arbitrate or whether their agreement covers a particular controversy.’” *Simply Wireless, Inc. v. T-Mobile US, Inc.*, 877 F.3d 522, 526 (4th Cir. 2017) (quoting *Rent-a-Ctr., W., Inc., v. Jackson*, 561 U.S. 63, 68-69 (2010)). The Agreement contains just such a requirement that any gateway questions be arbitrated.

Specifically, the “Mediation and Arbitration” provision requests that any dispute be resolved under the rules of the American Arbitration Association (“AAA”). *See* Exhibit A, Independent Arbitration Agreement at p. 4. The AAA rules expressly provide that “[t]he arbitrator shall have the power to rule on his or her own jurisdiction, including any objections with respect to existence, scope, or validity of the arbitration agreement or to the arbitrability of any claim or counterclaim.” AAA Rules, R-7, [https://www.adr.org/sites/default/files/CommercialRules\\_Web-](https://www.adr.org/sites/default/files/CommercialRules_Web-)

[Final.pdf](#). There is consensus among the Federal circuits that where, as here, an arbitration agreement incorporates the AAA rules by reference, questions of arbitrability must be reserved for the arbitrators. *See, e.g., Brennan v. Opus Bank*, 796 F.3d 1125, 1130 (9th Cir. 2015); *Petrofac, Inc. v. DynMcDermott Petrol. Ops. Co.*, 687 F.3d 671, 675 (5th Cir. 2012); *Terminix Int'l Co. v. Palmer Ranch Ltd. P'ship*, 432 F.3d 1327, 1332 (11th Cir. 2005); *Contec Corp. v. Remote Sol. Co.*, 398 F.3d 205, 208 (2d Cir. 2005). The Fourth Circuit recently “agree[d]” with the reasoning of these circuits in holding “that the incorporation of arbitral rules substantively identical to” the AAA rules “serves as ‘clear and unmistakable’ evidence of the parties’ intent to arbitrate arbitrability.” *Simply Wireless*, 877 F.3d at 527-28.

As a result, if the Court believes that an issue of arbitrability is seriously disputed in this case, it should require that any such dispute be resolved by the arbitrators in the first instance. Also, if this Court holds any claims or issues to be non-arbitrable, it should stay them while the arbitration proceeds. *See Am. Recovery Corp.*, 96 F.3d at 97 (noting a court’s discretion to issue such a stay). “When arbitration is likely to settle questions of fact pertinent to nonarbitral claims, consideration of judicial economy and avoidance of confusion and possible inconsistent results militate in favor of staying the entire action.” *Nat’l Material Trading v. M/V Kaptan Cebi*, No. 2:95-3673-23, 1997 WL 915000, at \*9 (D.S.C. Mar. 13, 1997). Here, the same types of conduct underlie all of Plaintiff’s claims across the entirety of the Complaint’s time span. Efficiency thus counsels staying any claims for which the Court does not compel to arbitration.

**IV. DEFENDANTS ALSO REQUEST A STAY AND/OR EXTENSION AS TO DISCOVERY AS ENGAGING IN DISCOVERY MAY CONSTITUTE A WAIVER AS TO ARBITRATION.**

As a final matter, Defendants request a stay and/or extension as to the discovery that was served by Plaintiff in this case. On August 26, 2021, Plaintiff served his First Set of Requests for Admission on Defendants. Currently, Defendants’ deadline to respond is September 25, 2021. As

the Court is aware, if no response is provided, the requests will be deemed admitted. However, Defendants are in quite a predicament considering that engaging in litigation could possibly be viewed as a waiver of arbitration. *See generally, General Equip. & Supply Co., Inc. v. Keller Rigging & Constr., SC, Inc.*, 344 S.C. 553, 544 S.E.2d 643 (Ct. App. 2001); *Liberty Builders, Inc. v. Horton*, 336 S.C. 658, 521 S.E.2d 749 (Ct. App. 1999). As such, Defendants respectfully request that this Court either stay discovery or provide an extension as to discovery until the Court rules on this Motion. Further, Defendants would respectfully request that the stay and/or extension be in place for thirty (30) days after the Court's order to provide Defendants adequate time to provide its responses and, if necessary, make any additional decisions as to the Court's order.

### **CONCLUSION**

At bottom, this Court's analysis is straightforward. First, there is a strong presumption that favors arbitration under the FAA that Plaintiff cannot rebut. Next, Plaintiff's claims arise squarely within the scope of the "Mediation and Arbitration" provision included in the Agreement and, therefore, Plaintiff is bound to arbitrate this matter in accordance with the terms set forth therein. Finally, the Agreement is a valid and enforceable contract under South Carolina law and Plaintiff expressly agreed to arbitrate when he entered into the Agreement that included a clear "Mediation and Arbitration" provision.

For the reasons stated above, Defendants respectfully request that this Court dismiss and/or stay Plaintiff's Complaint and compel mediation and arbitration of Plaintiff's claims.

[Signature Page Follows]

Respectfully Submitted,

**GRAVES & DAVIS, LLC**

*s/S. Tyler Graves*

---

S. Tyler Graves, Esquire

SC Bar No.: 103173

Logan S. Davis, Esquire

SC Bar No.: 104429

125E Wappoo Creek Dr., Ste. 102

Charleston, South Carolina 29412

P: 843-805-4649

F: 843-620-1047

[tgraves@gravesdavis.com](mailto:tgraves@gravesdavis.com)

[ldavis@gravesdavis.com](mailto:ldavis@gravesdavis.com)

*Attorneys for Defendants*

Charleston, South Carolina  
September 13, 2021

## INDEPENDENT CONTRACTOR AGREEMENT

THIS INDEPENDENT CONTRACTOR AGREEMENT is made and entered into on the 22<sup>nd</sup> day of November, 2017 ("Effective Date"), by and between JH3 CONSULTING, LLC, a North Carolina limited liability company (hereinafter referred to as the "Company"), and Jeremy Wilson (hereinafter referred to as the "Contractor"). The Company and Contractor are sometimes collectively referred to herein as the "Parties").

### RECITALS

**WHEREAS**, the Company is engaged in the business of providing consulting and management services to multi-disciplinary medical clinics ("Clients"); and

**WHEREAS**, the Company desires to engage the Contractor as an independent contractor in an executive role for the purpose of assisting the Company in teaching, recruiting, establishing and opening Clinics in accordance with the terms and conditions contained herein; and

**WHEREAS**, the Contractor has advised the Company of his willingness, ability, and desire to accept the engagement and to perform the Services in accordance with the following terms and conditions;

**NOW THEREFORE**, in consideration of the premises and the mutual covenants and conditions contained herein, the Company hereby engages the Contractor to render the Services described herein as an independent contractor of the Company as more particularly set forth as follows:

1. **Independent Contractor.** The Parties hereby agree that the relationship of the Contractor to the Company is one of independent contractor. The Contractor is not an employee of the Company and is not entitled to the rights or benefits afforded to the Company's employees, including disability or unemployment insurance, worker's compensation, medical insurance, sick leave, or any other employment benefit. The Contractor shall maintain and pay all federal, state, and local disability, unemployment, worker's compensation, and other insurance, training, permits, and licenses on Contractor's own behalf. The Contractor acknowledges that he is solely responsible for paying all federal, state, and local payroll taxes, self-employment insurance, and income and other taxes. The Company shall not withhold or pay any federal, state, or local disability, worker's compensation, payroll taxes, self-employment insurance, or income or other taxes on behalf of Contractor. The Company shall issue a Form 1099 to the Contractor with respect to all fees paid to the Contractor under this Agreement. It is the intention of the Parties that for tax purposes, the Contractor shall be treated as an independent contractor in accordance with Section 3508 of the Internal Revenue Code of 1986, as amended (the "Code").

2. **Engagement and Duties.** During the Term of this Agreement and any renewals thereof, the Contractor shall devote his attention, abilities, and best efforts in the performance of



- (a) Assisting the Company in recruiting Clients;
- (b) Assisting and being present for all openings of Clinics;
- (c) Assisting the Company in providing support and assistance to Clients; and
- (d) All other duties that may be assigned by the Company from time to time.

The Contractor shall determine the method, details, and means of performing the above-described Services, however, Contractor agrees to perform such Services in a manner consistent and compliant with all Company rules, policies and procedures.

3. Weekly Obligations. Contractor shall make himself reasonably available to Clients for any and all support or assistance needed.

- (a) Client Support- Contractor shall contact Clients at least twice per week to address any questions or concerns posed by the Clients.
- (b) Weekly Reports- Contractor shall provide weekly summaries or reports to Dr. Jeffrey Hedges regarding the status of current Clients and Contractor's progress and attempts to recruit additional Clients.

4. Compensation. The Company will collect twenty percent (20%) of the gross collections of each Client and Contractor shall receive compensation in an amount equal to forty percent (40%) of those collections NET from each Client to whom the Contractor has provided assistance for Twelve (12) months. Said compensation shall be paid on a monthly basis in accordance with the Company's standard payroll procedures and cycles. The final amount to be paid to the Jeremy Wilson will be after normal operating expenses and taxes are PAID estimated to be at or around Five thousand dollars (5,000.00).

5. Term and Termination. The term of this Agreement shall commence on the Effective Date hereof and shall remain in effect until terminated as hereinafter provided. This Agreement may be terminated by the Parties as follows:

- (a) Upon the occurrence of any of the following events of default, the Company may terminate this Agreement effective immediately upon notice to the Contractor. These rights are cumulative and are in addition to any other rights and remedies which the Company may have against the Contractor. The following shall be considered events of default:
  - (i) The Contractor's failure to comply with any of the Company's rules, policies or procedures.
  - (ii) The Contractor's refusal or failure to perform any of his obligations under this Agreement or violation of the terms of this Agreement.



- (iii) The Contractor's engagement in any act of dishonesty or misconduct in connection with the performance of his obligations or Services pursuant to this Agreement.
  - (iv) The Contractor's engagement in any acts or course of conduct which, in the Company's sole discretion, is derogatory, demeaning, or otherwise harmful to the Company, including, without limitation, false statements regarding the Company, its employees, officer, and/or agents.
  - (v) The occurrence of any event which would cause the Contractor's performance of his duties hereunder to violate any state, federal, or local law or regulation, or local ordinance.
  - (vi) The Contractor's conviction of or entrance of a plea of guilty or nolo contendere to a felony or other crime which has or may have a material adverse effect on his ability to carry out the Services
- (b) This Agreement may be terminated upon 7 days written notice from the Company due to Contractors poor performance including but not limited to Contractor's failure to generate collections, recruitments, and upon receipt of legitimate complaints from the Clients;
  - (b) This Agreement may be terminated, for any reason, by either Party upon 30 days written notice to the other;
  - (c) This Agreement shall terminate upon the death of the Contractor or upon the Contractor becoming disabled such that he can no longer perform the Services;
  - (d) This Agreement may be terminated by mutual written agreement of the Parties;
  - (e) This Agreement shall terminate immediately in the event there is a transfer of ownership in the Company; or
  - (f) This Agreement shall terminate immediately in the event the Company ceases its operation.

6. General Liability Insurance. The Contractor hereby acknowledges, understands, and agrees that the Company will not provide liability insurance or worker's compensation insurance for the Contractor. The Contractor also acknowledges, understands, and agrees that he is not an employee of the Company and, as such, the Company will not provide health insurance coverage for the Contractor nor will the Contractor be a participant of the Company's group health plan or any Company group health plan mandated by the Patient Protection and Affordable Care Act.

R&s 1500529J



7. Expenses. The Contractor shall not be reimbursed for any expenses, unless approved in advance by the Company, it being the intention of the Parties that the compensation paid to the Contractor is inclusive of any expenses incurred by the Contractor.

8. Confidentiality. The Contractor acknowledges that his contract with the Company will result in the Contractor acquiring and/or being exposed to information that is or will be confidential and proprietary to the Company. Said information includes, but is not limited to, client lists, marketing plans, pricing data, product plans, software, proprietary technology, and other intangible information such as methods and techniques for recruiting, managing, and providing support and assistance to Clients through software or otherwise (collectively "Confidential Information"). Such Information shall be deemed confidential to the extent it is not generally known within the trade. The Contractor agrees to make use of such information only in the performance of his duties under this Agreement, to maintain such information only in the performance of his duties under this Agreement, to maintain such information in confidence and to disclose the information only to persons with a reasonable need to know. Upon termination of this Agreement, the Contractor agrees to promptly deliver to the Company all documents and/or other materials containing such Confidential Information, and any and all copies or reproductions thereof.

9. Non-Competition. Contractor acknowledges and agrees that during the Term of this Agreement and for three (3) years following termination of this Agreement for any reason ("Restrictive Period"), Employee shall not, without the express prior written consent of the Company, directly or indirectly, engage in a "Competitive Activity" within a county or parish in which the Company operates or maintains Clients. The term "Competitive Activity" shall mean engaging or contracting to perform consulting or other management services to Clients.

10. Non-Solicitation. Contractor acknowledges and agrees that during the Restrictive Period, Contractor will not, either for Contractor's benefit or for the benefit of any other person or entity, directly or indirectly, solicit any of the Company's Clients, recruits, employees, or contractors to terminate their relationship with the Company or leave the Company's services for any reason.

11. Remedies upon Breach. The Parties acknowledge that the performance of the promises of each are expressly contingent upon the fulfillment and satisfaction of the obligations set forth in this Agreement. It is expressly agreed between the Parties that a violation of the provisions contained in paragraphs 8, 9, and 10 by the Contractor would cause irreparable harm to the Company, and a remedy at law would be inadequate. The Contractor agrees that he may be enjoined from the use or disclosure of Confidential Information, and/or engagement in Competitive Activity or Solicitation within the Restrictive Period by any court of competent jurisdiction. Nothing in this Agreement shall be construed as preventing the Company from pursuing any and all other remedies available to the Company for breach or threatened breach of this Agreement, including claims for damages

12. Liquidated Damages. As a further material inducement to the Company to enter this Agreement, Contractor agrees that, in addition to any and all remedies available to the



company based upon this Agreement, Contractor will immediately pay the sum of Five Hundred Thousand Dollars (\$500,000.00) to the Company as and for liquidated damages if the Contractor violates the provisions contained in paragraphs 8, 9, and/or 10 above. The Parties acknowledge that damages would be substantial but difficult to determine and therefore believe that such amount is a reasonable estimate of such damages and is not imposed as a penalty. Company shall have the immediate right to offset and apply all monies due to the Contractor under this Agreement against the aforesaid liquidated damages. Contractor acknowledges that the aforementioned liquidated damages may not adequately compensate the Company for its damages in the event of a violation of the provisions contained in paragraphs 8, 9, and 10, and not withstanding said liquidated damages, the Company may, in addition to the liquidated damages seek injunctive relief for such violations as provided in paragraph 11 above.

13. Mediation and Arbitration. The Parties agree that all disputes that relate to or arise from the relationship between the Contractor and the Company shall first be submitted to mediation. If mediation is unsuccessful, the Parties agree that such disputes shall be resolved through binding arbitration conducted in accordance with the rules of the American Arbitration Association which are then in effect. The arbitrator's decision shall be final and binding, without the right of appeal. Any party may seek to have judgment entered upon the award by a court of competent jurisdiction. The cost of mediation and/or arbitration shall be the joint responsibility of the Parties. Everything related to the mediation and/or arbitration, including without limitation, discovery, the hearing, the record of the proceeding and communications and correspondence regarding the proceeding are confidential and shall not be open or disclosed to any third party or the public except to the extent both parties agree otherwise in writing. The parties understand and agree that their only remedy for any dispute covered by this Agreement shall be through binding arbitration, and that they cannot proceed with such a dispute in court or any similar forum.

14. Optional Buy-out Provision. Company may, in its discretion, elect to give Contractor the option to purchase contract(s) held by the Company to provide services to Clients ("Buy-out"). In exchange for assignment of such contracts, Contractor shall pay an amount equal to three (3) percent of the total amount of collections received by the Company from the Client. Such Buy-out shall be consummated in a separate writing. Nothing herein requires the Company to notify the Contractor of the termination of any contract with its Client, nor is the Company obligated to give Contractor the first right of refusal before selling or assigning such contracts. Nothing herein requires or mandates that Company offer Buy-outs to the Contractor and the Company may elect not to offer such Buy-outs for any reason.

15. Amendment. No amendment, modification, or termination of, or addition to, this Agreement shall be valid unless and until executed in writing by the Parties to this Agreement.

16. Severability. If any provision(s) set forth in this Agreement is held to be invalid or unenforceable by any court of competent jurisdiction, such provision(s) shall be severed and the remainder of this Agreement shall remain valid and enforceable.

17. Assignment. This Agreement may not be assigned by the Contractor without the prior written consent of the Company and any attempted assignment in violation hereof shall be

R&s 1500529J



void. This Agreement may be assigned by the Company to any successor or affiliate of the Company.

18. Notice. Any notice, demand, request, consent, approval, or communication that either Party desires or is required to give to the other Party or any other person shall be in writing and either served personally or sent by prepaid, certified mail, return receipt requested, or by overnight carrier obtaining a receipt. For such purposes, the addresses set forth below shall be used. Either Party may change its address by giving Notice to the other Party of such change. Notice shall be deemed effective upon receipt, if made by personal delivery or overnight carrier obtaining a receipt, or three days after deposit in the United States Mail.

**Company:**

JH3 Consulting, LLC  
Attention: Dr. Jeffrey G. Hedges  
170 S Willow Brook Dr  
Asheville NC 28806

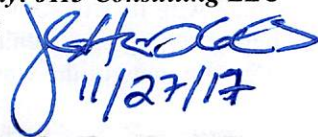
**Contractor:**

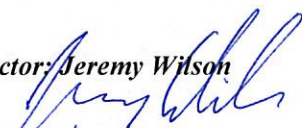
Jeremy Wilson  
1 Wiscasset Way  
Greenville, SC 29615

19. Entire Agreement. This Agreement is the exclusive agreement of the Parties hereto with respect to the subject matter hereof.

20. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of North Carolina.

**IN WITNESS WHEREOF**, the Parties hereto have executed this Agreement to be effective the day and year first written above.

Company: JH3 Consulting LLC  
NAME:   
Date: 11/27/17

Contractor: Jeremy Wilson  
Name:   
Date: 11/22/17

STATE OF SOUTH CAROLINA  
COUNTY OF GREENVILLE

Jeremy Wilson,

Plaintiff,

v.

JH3 Consulting LLC and Jeffrey G.  
Hedges,

Defendants.

IN THE COURT OF COMMON PLEAS  
FOR THE THIRTEENTH JUDICIAL  
CIRCUIT

Case No. 2021-CP-23-02564

**PLAINTIFF JEREMY WILSON'S**  
**MEMORANDUM IN OPPOSITION**  
**TO MOTION TO DISMISS OR**  
**ALTERNATIVELY COMPEL**  
**ARBITRATION**

COMES NOW Plaintiff, Jeremy Wilson (“Plaintiff”), by and through his undersigned counsel, and for its Memorandum in Opposition to Defendants JH3 Consulting, LLC (“JH3”) and Jeffrey G. Hedges’ (“Hedges”) (collectively, “Defendants”) Motion to Dismiss or Alternatively Compel Arbitration and states for the Court the following reasons:

1. Plaintiff’s Complaint is not subject to binding arbitration under the terms of Paragraph 13 of the Independent Contractor Agreement (the “ICA”) *which expressly predicates binding arbitration upon an “unsuccessful” mediation of the dispute by the parties.* Plaintiff sought to mediate this dispute in good faith and was rebuffed by Defendants who refused to mediate. As such, the binding arbitration provision, by its terms, has yet to be triggered.

2. Plaintiff is entitled to avail himself of the court system for resolution of his equitable claims arising *wholly independent from the ICA* and after the parties executed a termination of the ICA. Contrary to Defendant’s characterization of the instant dispute as arising from the Independent Contractor relationship established under the Agreement, Plaintiff’s claims arise not from a breach of the contractual relationship between the parties, but rather are founded in equity on the basis of Defendants’ unjust, unfair, and fraudulent treatment of Plaintiff, inducing

him to render services and confer benefits upon Defendants by promising to make him a member with an ownership interest in JH3 Consulting, LLC. While these equitable claims will inevitably need to be mediated pursuant to South Carolina law, first Plaintiff has a right to avail himself of the discovery process, a process Defendants seek to avoid fearing further uncovering of facts will lead to enhanced damages for Plaintiff.

3. Plaintiff's claims are properly pled in accordance with the South Carolina Rules of Civil Procedure, including Rule 8(a) and sufficient to survive a Motion under S.C.R.C.P. 12(b)(6), and the Complaint specifically alleges claims for Unjust Enrichment, Promissory Estoppel, Violation of South Carolina Unfair Trade Practices Act, and Fraud and Misrepresentation against Defendants who fail to cite any legal authority *or even raise any argument which addresses grounds for dismissing Plaintiff's complaint*. Rather, Defendants assert the allegations in Plaintiff's Complaint concerning the grounds for requesting equitable relief are subject to a binding arbitration provision and attach the ICA as an exhibit, both of which are factual assertions beyond the scope of pleadings and not properly before the Court for consideration on a motion to dismiss.

### **BACKGROUND FACTS**

Upon information and belief, Defendants provide consulting services to chiropractic and physical medicine clinics throughout the United States. As alleged in Plaintiff's well-pleaded complaint, in 2017, Defendant Hedges approached Plaintiff and offered Plaintiff an opportunity to be an independent contractor for JH3, promising Plaintiff financial compensation for his services. On November 22, 2017, Plaintiff executed the ICA pursuant to which he was to recruit new clients and provide onboarding support and assistance to these clients (the "Contractor Services") for the benefit of Defendant JH3 in exchange for compensation. After execution of the Agreement,

Plaintiff provided the Contractor Services pursuant to the terms of the Agreement and thereby significantly increased the revenue of Defendant JH3.

In April of 2019, the parties decided to end their relationship under the ICA. Defendants induced Plaintiff to sign a termination document (the “Termination Document”), attached hereto as Exhibit A. After execution of the Termination Document, Plaintiff provided services and onboarded multiple clients to Defendants in reliance on Defendants’ promises that he would be compensated and the parties’ mutual understanding that a new arrangement would be formalized in writing soon. As a result of Plaintiff’s services, new clients paid a significant sum to JH3 which amounted to approximately \$10,000 per month per client.

By June 2019, Defendants specifically represented to Plaintiff that he would be granted an ownership interest in and made a member of JH3 to compensate him going forward. Defendants even authorized Plaintiff to sign contracts with clients on behalf of JH3 as a member and held Plaintiff out to the public as an agent of JH3 for a period of sixteen months following execution of the Termination Document. To date, Defendants have not compensated Plaintiff since April 2019.

Plaintiff filed the present action on May 27, 2021, for relief *solely on equitable claims* of Unjust Enrichment, Promissory Estoppel Violation of South Carolina Unfair Trade Practices Act and Fraud and Misrepresentation on the basis of Defendants’ unjust, unfair, and fraudulent treatment of Plaintiff after termination of the ICA. Following a prolonged effort by Defendant Hedges to evade service, Defendants filed the instant motion.<sup>1</sup>

### **STANDARD OF REVIEW**

“A ruling on a 12(b)(6) motion to dismiss must be based solely upon the allegations set forth on the face of the complaint and the motion cannot be sustained if facts alleged and inferences

---

<sup>1</sup> Notably, the instant motion is set to come before the Court for hearing on September 16, 2021, the date which was originally set for a hearing on Plaintiff’s Motion to Deem Defendant Hedges served, filed on August 17, 2021.

reasonably deducible therefrom would entitle the plaintiff to any relief on any theory of the case.” *Toussaint v. Ham*, 292 S.C. 415, 416, 357 S.E.2d 8, 9 (1987), citing *Brown v. Leverette*, 291 S.C. 364, 353 S.E.2d 697 (1987); *see also* 5 C. Wright & A. Miller, *Federal Practice and Procedure* § 1357 (1969) (“The question is whether in the light most favorable to plaintiff, and with every doubt resolved in his behalf, the complaint states any valid claim for relief. The complaint should not be dismissed merely because the court doubts that plaintiff will prevail in the action.”) “The trial court . . . must presume all well pled facts to be true.” *Cricket Cove Ventures, LLC v. Gilland*, 701 S.E.2d 39, 44 (S.C. App. 2010).

### ARGUMENT

#### I. EVEN ASSUMING THE MEDIATION/ARBITRATION PROVISION IN THE ICA IS OTHERWISE ENFORCEABLE AND APPLIES TO PLAINTIFF’S COMPLAINT, BINDING ARBITRATION HAS YET TO BE TRIGGERED SINCE DEFENDANTS REFUSE TO MEDIATE.

As an initial matter, Defendant’s contention that Plaintiff’s complaint is subject to the mandatory binding arbitration provision found in paragraph 13 of the ICA falls flat because the arbitration provision in paragraph 13 has not been triggered. As quoted in Defendant’s motion and memorandum, paragraph 13 provides the following:

13. Mediation and Arbitration. The Parties agree that all disputes that relate to or arise from the relationship between the Contractor and the Company shall first be submitted to mediation. If mediation is unsuccessful, the Parties agree that such disputes shall be resolved through binding arbitration conducted in accordance with the rules of the American Arbitration Association which are then in effect. The arbitrator’s decision shall be final and binding, without the right of appeal. Any party may seek to have judgment entered upon the award by a court of competent jurisdiction. The cost of mediation and/or arbitration shall be the joint responsibility of the Parties. Everything related to the mediation and/or arbitration, including without limitation, discovery, the hearing, the record of the proceeding and communications and correspondence regarding the proceeding are confidential and shall not be open or disclosed to any third party or the public except to the extent both parties agree otherwise in writing. The parties understand and agree that their only remedy for any dispute covered by this Agreement shall be through binding arbitration, and that they cannot proceed with such a dispute in court or any similar forum.

The second sentence therein specifies that binding arbitration applies *only in the event that “mediation is unsuccessful.”* Put differently, the parties must first attempt to mediate their dispute

before the mandate to arbitrate is triggered. Defendants concede as much, noting in a footnote on page 2 of their memorandum that “this case should first be mediated and, if unsuccessful, resolved via binding arbitration as set forth in the Agreement.”

Here, Plaintiff attempted to mediate in good faith months before filing suit on equitable grounds but was rebuffed by Defendants. Counsel for Plaintiff sent a mediation demand to Defendants on February 2, 2021. Defendants responded stating that “I am not certain what there is to mediate. Your client and JH3 Consulting reached a mutual separation nearly two years ago - attached. There has not been any interim agreement.” See Exhibit B, attached hereto. Therefore, by its terms, the binding arbitration provision has yet to be triggered since Defendants’ refused to comply with the prerequisite mandatory mediation provision.<sup>2</sup>

**II. PLAINTIFF IS ENTITLED TO AVAIL HIMSELF OF THE COURT SYSTEM FOR RESOLUTION OF HIS EQUITABLE CLAIMS ARISING WHOLLY INDEPENDENT FROM THE ICA AND AFTER THE PARTIES EXECUTED A TERMINATION THEREOF.**

Rather than attempting to seek contractual damages for compensation owed under the independent contractor relationship, Plaintiff’s complaint seeks equitable relief arising from Defendants’ unjust, unfair, and fraudulent treatment of Plaintiff, inducing him to render services and confer benefits upon Defendants by promising to make him a member with an ownership interest in Defendant JH3 *following termination of the ICA*. Contrary to Defendant’s characterization of the instant dispute as arising from the independent contractor relationship subject to the binding arbitration provision applicable to “all disputes which relate to or arise from” the contractual relationship, Plaintiff’s complaint is not about the prior contractual relationship between the parties at all. Indeed, Plaintiff did not attach the ICA to the Complaint and there is no dispute that the parties executed the Termination Document on April 1, 2019 effectively ending

---

<sup>2</sup> Indeed, Defendant’s refusal to mediate itself amounts to breach of the Agreement.

the independent contractor relationship thereunder. Instead, as alleged in the Complaint, the Parties intended to form a different relationship from April 2019 going forward. Defendants specifically induced Plaintiff to provide services and recruit new clients with assurances that a new business arrangement would be formed and thereafter with promises Plaintiff would be granted an ownership interest as a member of Defendant JH3 to compensate him going forward. Defendants authorized Plaintiff to execute contracts as a member of Defendant JH3 and held Plaintiff out to the public as an agent of Defendant JH3 for a sixteen-month period after termination of the ICA.

The parties conducted themselves in a manor in all respects consistent with their mutual understanding and intent to enter a new business arrangement. Taking the allegations of Plaintiff's complaint as true, the new relationship establishing Plaintiff as a member/owner of Defendant JH3 would, absent a written operating agreement, fall within the ambit of the South Carolina Limited Liability Company Act (S.C. Code § 33-44-101 et seq.). The Act does not contain a mandatory arbitration provision, and it would be both unreasonable and unjust to compel arbitration of the ownership dispute and alleged equitable claims arising therefrom when it is evident the parties no longer expected, much less desired for the ICA terms to govern their relationship.<sup>3</sup> Accordingly, Plaintiff's equitable claims are wholly independent from and unrelated to the previous independent contractor relationship under the ICA and therefore are not subject to binding arbitration.

If anything, Plaintiff would stipulate to arbitration of any and all contractual claims or relief arising out of the prior contractual relationship between the parties. Nevertheless, the interest of

---

<sup>3</sup> Defendants cite *Simply Wireless, Inc. v. T-Mobile US, Inc.*, 877 F.3d 522, 526 (4th Cir. 2017) for the proposition that even the issue of whether Plaintiff's claims are arbitrable must be decided by the arbitrator. Yet, the dispute at hand does not involve a question as to whether certain rights or claims fall within the contractual grant of authority to an arbitrator but rather involves claims for equitable relief arising from an entirely separate relationship from that for which the parties contemplated arbitration. Defendants' attempt to invoke arbitration of Plaintiff's wholly unrelated equitable claims – in the wake of Defendant Hedge's prolonged effort to evade service and after Defendant JH3 itself filed suit against Plaintiff alleging contractual claims under the ICA in North Carolina – has all the earmarks of an illegitimate request most likely calculated to deprive Plaintiff of his right to avail himself of the discovery process.

justice requires that Plaintiff be afforded the opportunity to participate in the discovery process to determine the extent of the equitable damages Plaintiff may have. While Plaintiff's equitable claims will inevitably need to be mediated, first Plaintiff has a right to avail himself of the discovery process, a process Defendants obviously seek to avoid for fear of uncovering further facts which will lead to enhanced damages for Plaintiff.

**III. PLAINTIFF'S CLAIMS ARE PROPERLY PLED IN ACCORDANCE WITH THE SOUTH CAROLINA RULES OF CIVIL PROCEDURE, INCLUDING RULES 8(A) AND 12(B)(6).**

The Complaint specifically alleges claims for Unjust Enrichment, Promissory Estoppel Violation of South Carolina Unfair Trade Practices Act and Fraud and Misrepresentation and meets the pleading standards under South Carolina law. Defendants fail to cite any legal authority or raise a single argument in their memorandum which addresses grounds for dismissing Plaintiff's complaint. Rather, Defendants rely exclusively on their assertion the allegations in Plaintiff's Complaint are subject to binding arbitration and attach the ICA as an exhibit. Neither the arbitration provision nor the ICA as a whole are properly before the Court on this motion to dismiss. *Toussaint*, 292 S.C. at 416. In as much as Defendants rely on extraneous evidence beyond the four corners of the complaint, Defendants purport to convert the present Motion to Dismiss into a Motion for Summary Judgment pursuant to Rule 56. Summary judgment. Summary judgment is not appropriate at this stage of litigation as such a motion would be extremely premature. *See, e.g., Gary v. Askew*, 423, S.C. 47, 49 (2018); *Baird v. Charleston Cty.*, 333 S.C. 519, 529, 511 S.E.2d 69, 74 (1999) (“[S]ummary judgment must not be granted until the opposing party has had a full and fair opportunity to complete discovery.”); *Baughman v. Am. Tel. & Tel. Co.*, 306 S.C. 101, 410 S.E.2d 537 (1991) (holding summary judgment was premature where the plaintiff did not have an adequate opportunity to conduct discovery on the issue of medical causation)

## CONCLUSION

Defendants' motion to dismiss or stay and compel arbitration must be denied because even if the binding arbitration provision is enforceable and applicable to Plaintiff's Complaint, that provision has not yet been triggered since Defendants refuse to mediate. Moreover, Plaintiff is entitled to avail himself of the court system for resolution of his equitable claims arising out of the new business arrangement between the parties wholly independent from the ICA and after the parties executed a termination of the ICA. Finally, Plaintiff's claims are properly pled in accordance with the South Carolina Rules of Civil Procedure, including rules 8(a) and 12(b)(6), and Defendants fail to cite any legal authority or raise any argument which addresses grounds for dismissing Plaintiff's claims apart from introducing extraneous evidence beyond the four corners of the pleadings. Therefore, for the reasons set forth above, Plaintiff respectfully requests that the Court deny Defendants' motion or, alternatively, grant in part and enter an order compelling arbitration only to the extent of any claims for contractual relief and/or damages arising from the prior independent contractor relationship between the parties under the ICA.

Respectfully submitted this 14<sup>th</sup> day of September, 2021.

CAMPBELL TEAGUE LLC

/s/ Molly H. Cash

Beau B. Brogdon (SC Bar #103803)

Molly H. Cash (SC Bar #103152)

16 W. North St.

Greenville, South Carolina 29601

PH: (864) 326-4186

beau@campbellteague.com

molly@campbellteague.com

*Attorneys for Jeremy Wilson*

**CERTIFICATE OF SERVICE**

IT IS HEREBY CERTIFIED that a copy of the foregoing document was served upon the following by Email and Notice of Electronic Filing:

S. Tyler Graves (SC Bar No.: 103173)  
Logan S. Davis (SC Bar No.: 104429)  
[tgraves@gravesdavis.com](mailto:tgraves@gravesdavis.com)  
[ldavis@gravesdavis.com](mailto:ldavis@gravesdavis.com)

Molly H. Cash  
Attorney for Plaintiff

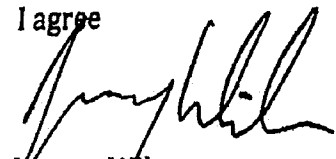
Date: September 14<sup>th</sup>, 2021

Jh3 Consulting LLC  
12 Cool Springs Dr  
Asheville NC 28806  
April 1st 2019

This is a formal agreement that Jeremy Wilson IC Contract has ended and both JH3 Consulting and Jeremy Wilson are agreeing that Jeremy has been paid in full and reports that he has been paid to the terms of the IC Contract and if another Client comes on board Jeremy Wilson will be the IC for that Client and will sign a new IC agreement.

Jeremy reports that he has nothing bad to say about Jh3 Consulting and this has been a great experience and Jh3 has been transparent throughout the process.

I agree

  
Jeremy Wilson

  
Jh3 Consulting LLC

# RE: Mediation Demand - JH3 Consulting

---

From: **Yarbrough, Jonathan** | JYarbrough@constangy.com

Tuesday, Feb 2, 1:42 PM

To: **Beau Brogdon** | beau@campbellteague.com

Cc: **Molly Cash** | molly@campbellteague.com, **Bailey Pierson** | bailey@campbellteague.com

Beau – I am not certain what there is to mediate. Your client and JH3 Consulting reached a mutual separation nearly two years ago - attached. There has not been any interim agreement. If you believe that there is an unresolved issue to mediate, please let me know the details of such and provide me with any documents necessary for review.

**Jonathan W Yarbrough**  
**Partner - Office Head**

Constangy, Brooks, Smith & Prophete, LLP

Direct: 828.277.5137 • Mobile: 828.215.3529 • Direct Fax: 828.333.5009

E-mail: [JYarbrough@constangy.com](mailto:JYarbrough@constangy.com) • [View Bio/VCard](#) • Legal Assistant: Linda Nolan, 828-333-5012

84 Peachtree Road

Suite 230

Asheville, NC 28803

Main: 828.333.4218 • Fax: 828.277.5138

\*\*\*\*\*

ELECTRONICALLY FILED - 2021 Sep 14 11:57 PM - GREENVILLE - COMMON PLEAS - CASE#2021CP2302564



**GRAVES & DAVIS**  
Attorneys at Law

**ATTORNEYS**  
S. Tyler Graves, *Partner* (SC)  
Logan S. Davis, *Partner* (SC)

**LOCATION**  
125E Wappoo Creek Dr., Ste. 102  
Charleston, SC 29412

**CONTACT**  
P: 843-805-4649  
F: 843-620-1047

---

September 15, 2021

**SENT VIA E-FILE & E-MAIL**

The Honorable Alex Kinlaw, Jr.  
305 E. North Street  
Greenville, SC 29601  
[akinlawsc@sccourts.org](mailto:akinlawsc@sccourts.org)

Re: Supplemental Exhibits  
*Jeremy Wilson v. JH3 Consulting, LLC and Jeffrey G. Hedges*  
*Case No. 2021-CP-23-02564*

Dear Judge Kinlaw:

Attached, please find Defendants' supplemental exhibits related to Defendants' Motion to Dismiss and/or Stay and Compel Mediation and Arbitration, which is set to be heard on September 16, 2021. We respectfully request that the Court consider the supplemental exhibits, which will be referenced in rebuttal to Plaintiff's Memorandum in Opposition.

Please do not hesitate to contact me if you have any questions or concerns regarding this matter.

Sincerely,

/s/ S. Tyler Graves  
Graves & Davis, LLC  
S. Tyler Graves, Esq. (SC Bar #103173)  
Logan S. Davis, Esq. (SC Bar #104429)

Cc: Logan S. Davis, Esq.  
Beau B. Brogdon, Esq.  
Molly H. Cash, Esq.

Enclosures: Supplemental Exhibits

---

**GRAVES & DAVIS, LLC**  
125E Wappoo Creek Dr., Ste. 102, Charleston, SC 29412  
P: 843-805-4649 / F: 843-620-1047  
[www.gravesdavis.com](http://www.gravesdavis.com)

ROP 00075

# **SUPPLEMENTAL EXHIBITS**

**Supplemental Exhibit 1**

**Wednesday, September 15, 2021 at 06:56:24 Eastern Daylight Time**

---

ELECTRONICALLY FILED - 2021 Sep 15 7:17 AM - GREENVILLE - COMMON PLEAS - CASE#2021CP2302564

**Subject:** Motion to Deem Defendant Hedges Served - 9/16

**Date:** Thursday, August 26, 2021 at 3:32:52 PM Eastern Daylight Time

**From:** Beau Brogdon

**To:** Logan Davis, Tyler Graves, Bryan A. Raymond

**CC:** Molly Cash, Bailey Pierson

Logan, Tyler and Bryan,

I see that the Motion to Dismiss you filed yesterday has been set for a hearing on September 16th here in Greenville.

As discussed on the phone yesterday, we've discussed with our client, and we will withdraw our Motion to Deem Hedges Served, as it is now moot. That said, please inform your client that we fully intend to seek recovery of the ~\$6,040.24 that our client was forced to spend due to your client's evasive tactics, while suing our client personally in North Carolina in the interim.

We therefore expressly reserve the right to demand reimbursement during mediation, whenever that is to occur, and/or seek attorneys fees and costs at any subsequent hearing, trial or post-trial.

We also will not be consenting to an early mediation, as discussed yesterday.

Best,

Beau

*Campbell Teague was built to operate 100% remote from day one. We remain open without interruption.*

CAMPBELL TEAGUE LLC  
Beau B. Brogdon, Esq.  
16 W. North St.  
Greenville, SC 29601  
Main: (864) 326-4186  
Direct: (864) 326-3898  
[www.campbellteague.com](http://www.campbellteague.com)

# Re: JH3 Consulting and Dr. Jeffrey Hedges

ELECTRONICALLY FILED - 2021 Aug 15 7:18 PM - GREENVILLE - COMMON PLEAS - CASE#2021CP2302564

From: **Beau Brogdon** [REDACTED]

Tuesday, Jul 6, 11:20 AM

To: **Yarbrough, Jonathan** [REDACTED]

Cc: **Molly Cash** [REDACTED] **Bailey Pierson** [REDACTED]

Jonathan,

Can you please indicate whether you represent Dr. Jeffrey Hedges and his entity JH3 Consulting LLC?

If so, are you authorized to accept service of a Summons and Complaint on his behalf?

Thanks,

Beau

*Campbell Teague was built to operate 100% remote from day one. We remain open without interruption.*

CAMPBELL TEAGUE LLC

Beau B. Brogdon, Esq.

16 W. North St.

Greenville, SC 29601

Main: (864) 326-4186

Direct: (864) 326-3898

[www.campbellteague.com](http://www.campbellteague.com)

From: **Beau Brogdon** [REDACTED]

Thursday, Jul 8, 11:44 AM

To: **Yarbrough, Jonathan** [REDACTED]

Cc: **Molly Cash** [REDACTED] **Bailey Pierson** [REDACTED]

Jonathan,

Just following up here regarding your representation of JH3 Consulting and Dr. Hedges.

Thank you,

Beau

*Campbell Teague was built to operate 100% remote from day one. We remain open without interruption.*

CAMPBELL TEAGUE LLC  
Beau B. Brogdon, Esq.  
16 W. North St.  
Greenville, SC 29601  
Main: (864) 326-4186  
Direct: (864) 326-3898  
[www.campbellteague.com](http://www.campbellteague.com)

---

From: **Beau Brogdon** [REDACTED]

Tuesday, Jul 13, 9:50 AM

To: **Yarbrough, Jonathan** [REDACTED]

Cc: **Molly Cash** [REDACTED] **Bailey Pierson** [REDACTED]

Jon,

Following up here regarding your representation of JH3 Consulting and Dr. Hedges. Can you get us an answer on that front?

Thank you,

Beau

*Campbell Teague was built to operate 100% remote from day one. We remain open without interruption.*

CAMPBELL TEAGUE LLC  
Beau B. Brogdon, Esq.  
16 W. North St.  
Greenville, SC 29601  
Main: (864) 326-4186  
Direct: (864) 326-3898  
[www.campbellteague.com](http://www.campbellteague.com)

---

From: **Beau Brogdon** [REDACTED]

Thursday, Jul 22, 11:34 AM

To: **Yarbrough, Jonathan** [REDACTED]

Cc: **Molly Cash** [REDACTED] **Bailey Pierson** [REDACTED]

Jon,

Are you authorized to accept service of the attached Summons and Complaint that was filed against JH3 Consulting LLC and Jeffrey G. Hedges? It was filed on May 27, 2021.

It is my understanding you represent JH3 Consulting LLC. Please advise.

Thanks,

Beau

*Campbell Teague was built to operate 100% remote from day one. We remain open without interruption.*

CAMPBELL TEAGUE LLC

Beau B. Brogdon, Esq.

16 W. North St.

Greenville, SC 29601

Main: (864) 326-4186

Direct: (864) 326-3898

[www.campbellteague.com](http://www.campbellteague.com)

---

# RE: JH3 Consulting and Dr. Jeffrey Hedges [CNGY-WORKSITE.FID1435434]

---

From: Yarbrough, Jonathan [REDACTED]

Thursday, Jul 22, 11:38 AM

To: Beau Brogdon [REDACTED]

Cc: Molly Cash [REDACTED] Bailey Pierson [REDACTED]

I am not licensed in SC and have not been given any authority to accept.

**Jonathan W Yarbrough**

**Partner - Office Head**

Constangy, Brooks, Smith & Prophete, LLP

Direct: [REDACTED]

E-mail: [REDACTED]

84 Peachtree Road

Suite 230

Asheville, NC 28803

Main: 828.333.4218 • Fax: 828.277.5138

\*\*\*\*\*

ELECTRONICALLY FILED - 2021 Aug 15 7:18 PM - GREENVILLE - COMMON PLEAS - CASE#2021CP2302564

## INDEPENDENT CONTRACTOR AGREEMENT

THIS INDEPENDENT CONTRACTOR AGREEMENT is made and entered into on the 22<sup>nd</sup> day of November, 2017 ("Effective Date"), by and between JH3 CONSULTING, LLC, a North Carolina limited liability company (hereinafter referred to as the "Company"), and Jeremy Wilson (hereinafter referred to as the "Contractor"). The Company and Contractor are sometimes collectively referred to herein as the "Parties").

### RECITALS

**WHEREAS**, the Company is engaged in the business of providing consulting and management services to multi-disciplinary medical clinics ("Clients"); and

**WHEREAS**, the Company desires to engage the Contractor as an independent contractor in an executive role for the purpose of assisting the Company in teaching, recruiting, establishing and opening Clinics in accordance with the terms and conditions contained herein; and

**WHEREAS**, the Contractor has advised the Company of his willingness, ability, and desire to accept the engagement and to perform the Services in accordance with the following terms and conditions;

**NOW THEREFORE**, in consideration of the premises and the mutual covenants and conditions contained herein, the Company hereby engages the Contractor to render the Services described herein as an independent contractor of the Company as more particularly set forth as follows:

1. **Independent Contractor.** The Parties hereby agree that the relationship of the Contractor to the Company is one of independent contractor. The Contractor is not an employee of the Company and is not entitled to the rights or benefits afforded to the Company's employees, including disability or unemployment insurance, worker's compensation, medical insurance, sick leave, or any other employment benefit. The Contractor shall maintain and pay all federal, state, and local disability, unemployment, worker's compensation, and other insurance, training, permits, and licenses on Contractor's own behalf. The Contractor acknowledges that he is solely responsible for paying all federal, state, and local payroll taxes, self-employment insurance, and income and other taxes. The Company shall not withhold or pay any federal, state, or local disability, worker's compensation, payroll taxes, self-employment insurance, or income or other taxes on behalf of Contractor. The Company shall issue a Form 1099 to the Contractor with respect to all fees paid to the Contractor under this Agreement. It is the intention of the Parties that for tax purposes, the Contractor shall be treated as an independent contractor in accordance with Section 3508 of the Internal Revenue Code of 1986, as amended (the "Code").

2. **Engagement and Duties.** During the Term of this Agreement and any renewals thereof, the Contractor shall devote his attention, abilities, and best efforts in the performance of



- (a) Assisting the Company in recruiting Clients;
- (b) Assisting and being present for all openings of Clinics;
- (c) Assisting the Company in providing support and assistance to Clients; and
- (d) All other duties that may be assigned by the Company from time to time.

The Contractor shall determine the method, details, and means of performing the above-described Services, however, Contractor agrees to perform such Services in a manner consistent and compliant with all Company rules, policies and procedures.

3. Weekly Obligations. Contractor shall make himself reasonably available to Clients for any and all support or assistance needed.

- (a) Client Support- Contractor shall contact Clients at least twice per week to address any questions or concerns posed by the Clients.
- (b) Weekly Reports- Contractor shall provide weekly summaries or reports to Dr. Jeffrey Hedges regarding the status of current Clients and Contractor's progress and attempts to recruit additional Clients.

4. Compensation. The Company will collect twenty percent (20%) of the gross collections of each Client and Contractor shall receive compensation in an amount equal to forty percent (40%) of those collections NET from each Client to whom the Contractor has provided assistance for Twelve (12) months. Said compensation shall be paid on a monthly basis in accordance with the Company's standard payroll procedures and cycles. The final amount to be paid to the Jeremy Wilson will be after normal operating expenses and taxes are PAID estimated to be at or around Five thousand dollars (5,000.00).

5. Term and Termination. The term of this Agreement shall commence on the Effective Date hereof and shall remain in effect until terminated as hereinafter provided. This Agreement may be terminated by the Parties as follows:

- (a) Upon the occurrence of any of the following events of default, the Company may terminate this Agreement effective immediately upon notice to the Contractor. These rights are cumulative and are in addition to any other rights and remedies which the Company may have against the Contractor. The following shall be considered events of default:
  - (i) The Contractor's failure to comply with any of the Company's rules, policies or procedures.
  - (ii) The Contractor's refusal or failure to perform any of his obligations under this Agreement or violation of the terms of this Agreement.



- (iii) The Contractor's engagement in any act of dishonesty or misconduct in connection with the performance of his obligations or Services pursuant to this Agreement.
  - (iv) The Contractor's engagement in any acts or course of conduct which, in the Company's sole discretion, is derogatory, demeaning, or otherwise harmful to the Company, including, without limitation, false statements regarding the Company, its employees, officer, and/or agents.
  - (v) The occurrence of any event which would cause the Contractor's performance of his duties hereunder to violate any state, federal, or local law or regulation, or local ordinance.
  - (vi) The Contractor's conviction of or entrance of a plea of guilty or nolo contendere to a felony or other crime which has or may have a material adverse effect on his ability to carry out the Services
- (b) This Agreement may be terminated upon 7 days written notice from the Company due to Contractors poor performance including but not limited to Contractor's failure to generate collections, recruitments, and upon receipt of legitimate complaints from the Clients;
  - (b) This Agreement may be terminated, for any reason, by either Party upon 30 days written notice to the other;
  - (c) This Agreement shall terminate upon the death of the Contractor or upon the Contractor becoming disabled such that he can no longer perform the Services;
  - (d) This Agreement may be terminated by mutual written agreement of the Parties;
  - (e) This Agreement shall terminate immediately in the event there is a transfer of ownership in the Company; or
  - (f) This Agreement shall terminate immediately in the event the Company ceases its operation.

6. General Liability Insurance. The Contractor hereby acknowledges, understands, and agrees that the Company will not provide liability insurance or worker's compensation insurance for the Contractor. The Contractor also acknowledges, understands, and agrees that he is not an employee of the Company and, as such, the Company will not provide health insurance coverage for the Contractor nor will the Contractor be a participant of the Company's group health plan or any Company group health plan mandated by the Patient Protection and Affordable Care Act.

R&s 1500529J



7. Expenses. The Contractor shall not be reimbursed for any expenses, unless approved in advance by the Company, it being the intention of the Parties that the compensation paid to the Contractor is inclusive of any expenses incurred by the Contractor.

8. Confidentiality. The Contractor acknowledges that his contract with the Company will result in the Contractor acquiring and/or being exposed to information that is or will be confidential and proprietary to the Company. Said information includes, but is not limited to, client lists, marketing plans, pricing data, product plans, software, proprietary technology, and other intangible information such as methods and techniques for recruiting, managing, and providing support and assistance to Clients through software or otherwise (collectively "Confidential Information"). Such Information shall be deemed confidential to the extent it is not generally known within the trade. The Contractor agrees to make use of such information only in the performance of his duties under this Agreement, to maintain such information only in the performance of his duties under this Agreement, to maintain such information in confidence and to disclose the information only to persons with a reasonable need to know. Upon termination of this Agreement, the Contractor agrees to promptly deliver to the Company all documents and/or other materials containing such Confidential Information, and any and all copies or reproductions thereof.

9. Non-Competition. Contractor acknowledges and agrees that during the Term of this Agreement and for three (3) years following termination of this Agreement for any reason ("Restrictive Period"), Employee shall not, without the express prior written consent of the Company, directly or indirectly, engage in a "Competitive Activity" within a county or parish in which the Company operates or maintains Clients. The term "Competitive Activity" shall mean engaging or contracting to perform consulting or other management services to Clients.

10. Non-Solicitation. Contractor acknowledges and agrees that during the Restrictive Period, Contractor will not, either for Contractor's benefit or for the benefit of any other person or entity, directly or indirectly, solicit any of the Company's Clients, recruits, employees, or contractors to terminate their relationship with the Company or leave the Company's services for any reason.

11. Remedies upon Breach. The Parties acknowledge that the performance of the promises of each are expressly contingent upon the fulfillment and satisfaction of the obligations set forth in this Agreement. It is expressly agreed between the Parties that a violation of the provisions contained in paragraphs 8, 9, and 10 by the Contractor would cause irreparable harm to the Company, and a remedy at law would be inadequate. The Contractor agrees that he may be enjoined from the use or disclosure of Confidential Information, and/or engagement in Competitive Activity or Solicitation within the Restrictive Period by any court of competent jurisdiction. Nothing in this Agreement shall be construed as preventing the Company from pursuing any and all other remedies available to the Company for breach or threatened breach of this Agreement, including claims for damages

12. Liquidated Damages. As a further material inducement to the Company to enter this Agreement, Contractor agrees that, in addition to any and all remedies available to the



company based upon this Agreement, Contractor will immediately pay the sum of Five Hundred Thousand Dollars (\$500,000.00) to the Company as and for liquidated damages if the Contractor violates the provisions contained in paragraphs 8, 9, and/or 10 above. The Parties acknowledge that damages would be substantial but difficult to determine and therefore believe that such amount is a reasonable estimate of such damages and is not imposed as a penalty. Company shall have the immediate right to offset and apply all monies due to the Contractor under this Agreement against the aforesaid liquidated damages. Contractor acknowledges that the aforementioned liquidated damages may not adequately compensate the Company for its damages in the event of a violation of the provisions contained in paragraphs 8, 9, and 10, and not withstanding said liquidated damages, the Company may, in addition to the liquidated damages seek injunctive relief for such violations as provided in paragraph 11 above.

13. Mediation and Arbitration. The Parties agree that all disputes that relate to or arise from the relationship between the Contractor and the Company shall first be submitted to mediation. If mediation is unsuccessful, the Parties agree that such disputes shall be resolved through binding arbitration conducted in accordance with the rules of the American Arbitration Association which are then in effect. The arbitrator's decision shall be final and binding, without the right of appeal. Any party may seek to have judgment entered upon the award by a court of competent jurisdiction. The cost of mediation and/or arbitration shall be the joint responsibility of the Parties. Everything related to the mediation and/or arbitration, including without limitation, discovery, the hearing, the record of the proceeding and communications and correspondence regarding the proceeding are confidential and shall not be open or disclosed to any third party or the public except to the extent both parties agree otherwise in writing. The parties understand and agree that their only remedy for any dispute covered by this Agreement shall be through binding arbitration, and that they cannot proceed with such a dispute in court or any similar forum.

14. Optional Buy-out Provision. Company may, in its discretion, elect to give Contractor the option to purchase contract(s) held by the Company to provide services to Clients ("Buy-out"). In exchange for assignment of such contracts, Contractor shall pay an amount equal to three (3) percent of the total amount of collections received by the Company from the Client. Such Buy-out shall be consummated in a separate writing. Nothing herein requires the Company to notify the Contractor of the termination of any contract with its Client, nor is the Company obligated to give Contractor the first right of refusal before selling or assigning such contracts. Nothing herein requires or mandates that Company offer Buy-outs to the Contractor and the Company may elect not to offer such Buy-outs for any reason.

15. Amendment. No amendment, modification, or termination of, or addition to, this Agreement shall be valid unless and until executed in writing by the Parties to this Agreement.

16. Severability. If any provision(s) set forth in this Agreement is held to be invalid or unenforceable by any court of competent jurisdiction, such provision(s) shall be severed and the remainder of this Agreement shall remain valid and enforceable.

17. Assignment. This Agreement may not be assigned by the Contractor without the prior written consent of the Company and any attempted assignment in violation hereof shall be

R&s 1500529J



void. This Agreement may be assigned by the Company to any successor or affiliate of the Company.

18. Notice. Any notice, demand, request, consent, approval, or communication that either Party desires or is required to give to the other Party or any other person shall be in writing and either served personally or sent by prepaid, certified mail, return receipt requested, or by overnight carrier obtaining a receipt. For such purposes, the addresses set forth below shall be used. Either Party may change its address by giving Notice to the other Party of such change. Notice shall be deemed effective upon receipt, if made by personal delivery or overnight carrier obtaining a receipt, or three days after deposit in the United States Mail.

**Company:**

JH3 Consulting, LLC  
Attention: Dr. Jeffrey G. Hedges  
170 S Willow Brook Dr  
Asheville NC 28806

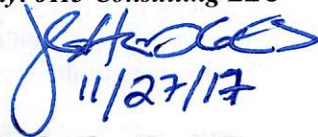
**Contractor:**

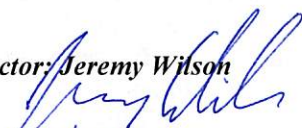
Jeremy Wilson  
1 Wiscasset Way  
Greenville, SC 29615

19. Entire Agreement. This Agreement is the exclusive agreement of the Parties hereto with respect to the subject matter hereof.

20. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of North Carolina.

**IN WITNESS WHEREOF**, the Parties hereto have executed this Agreement to be effective the day and year first written above.

Company: JH3 Consulting LLC  
NAME:   
Date: 11/27/17

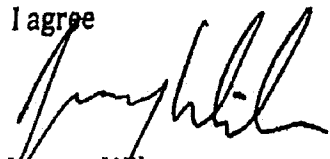
Contractor: Jeremy Wilson  
Name:   
Date: 11/22/17

Jh3 Consulting LLC  
12 Cool Springs Dr  
Asheville NC 28806  
April 1st 2019

This is a formal agreement that Jeremy Wilson IC Contract has ended and both JH3 Consulting and Jeremy Wilson are agreeing that Jeremy has been paid in full and reports that he has been paid to the terms of the IC Contract and if another Client comes on board Jeremy Wilson will be the IC for that Client and will sign a new IC agreement.

Jeremy reports that he has nothing bad to say about Jh3 Consulting and this has been a great experience and Jh3 has been transparent throughout the process.

I agree

  
Jeremy Wilson

  
Jh3 Consulting LLC

---

**CERTIFICATE OF COUNSEL**

---

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

*s/S. Tyler Graves*

\_\_\_\_\_  
S. Tyler Graves (SC Bar No. 103173)

Logan S. Davis (SC Bar No. 104429)

Graves & Davis, LLC

125E Wappoo Creek Drive, Suite 102

Charleston, SC 29412

Tel: (843) 805-4649

Fax: (843) 620-1047

Attorneys for Appellants

December 7, 2022