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SC Court of Appeals

IN THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM GREENVILLE COUNTY
COURT OF COMMON PLEAS

THE HONORABLE ALEX KINLAW, JR., Circuit Court Judge

Appellate Case No. 2021-001096

Jeremy Wilson, *Respondent*,

v.

Jeffrey G. Hedges and
JH3 Consulting, LLC, *Appellants*.

APPELLANTS' RESPONSE TO RESPONDENT'S MOTION TO DISMISS

Appellants, by and through undersigned counsel, submit the following Response to the Motion to Dismiss that was filed by Respondent on February 3, 2022. This response is supported by the South Carolina Appellate Court Rules, applicable statutes and case law, and Appellants' Memorandum of Points and Authority.

Respectfully submitted this 26th day of May 2022.

GRAVES & DAVIS, LLC

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Attorneys for Appellants

MEMORANDUM OF POINTS AND AUTHORITY

I. INTRODUCTION AND BACKGROUND

This is an appeal from the circuit court's denial of Appellants' Motion to Dismiss and/or Stay and Compel Mediation and Arbitration. On May 27, 2021, Respondent Jeremy Wilson (hereinafter "Respondent") filed his Complaint against Appellants Jeffrey G. Hedges ("Hedges") and JH3 Consulting, LLC ("JH3") (collectively "Appellants"). (Pl.'s Compl.) In the Complaint, Respondent alleges the following causes of action: (1) unjust enrichment; (2) promissory estoppel; (3) violation of the South Carolina Unfair Trade Practices Act; and (4) fraud and misrepresentation. (*Id*.) In short, Respondent's claims relate to his relationship with Appellants and the alleged failure by Appellants to compensate Respondent for services he provided as an independent contractor. (*Id*.)

In response to the Complaint, Appellants timely filed their Motion to Dismiss and/or Stay and Compel Mediation and Arbitration on August 25, 2021. (Defs.' Mot. to Dismiss.) On September 16, 2021, the circuit court heard oral arguments on Defendants' Motion to Dismiss and/or Stay and Compel Mediation and Arbitration. (Transcript of Hearing.) On that same day, Defendants received a Form 4 Order denying their Motion to Dismiss and/or Stay and Compel Mediation and Arbitration. (September 16, 2021 Order.) Defendants timely filed a Notice of Appeal on September 23, 2021, which was served on Plaintiff that day as well. (Notice of Appeal.) Appellants then filed and served Appellants' Initial Brief on January 4, 2022, which set forth the issue on appeal as follows:

(1) Whether the circuit court erred by finding that Plaintiff's claims do not fall within the scope of the Mediation and Arbitration Provision included in the Agreement?

(Appellants' Initial Brief, p.1.) This issue is ripe for this Court's review. However, Respondent filed a Motion to Dismiss the appeal filed by Appellants.

II. ARGUMENT

On February 3, 2022, Respondent filed a Motion to Dismiss arguing that this appeal should be dismissed for the following reasons: (1) the issue for appeal misconstrues the circuit court's September 16, 2021 Order to the extent Appellants' assert the circuit court made an explicit finding that Respondent's claims do not fall within the scope of the Mediation and Arbitration Provision included in the Agreement; and (2) the appeal seeks appellate review of an issue which Appellants failed to preserve by bringing an appropriate post-judgment motion. Respectfully, Respondent's argument for dismissal is misplaced and this Court should allow the appeal to move forward.

A. Appellants' stated issue is ripe for appellate review.

First, Respondent argues that Appellants issue is not ripe for appellate review because the circuit court did not address whether the claims fall within the scope of the mediation and arbitration provision included in the agreement at issue in its September 16, 2021 Order. The only issue that the circuit court had before it was whether Respondent's claims are subject to the Mediation and Arbitration Provision. In fact, there was no dispute as to whether the Agreement at issue was enforceable as the parties had agreed that it was a binding and enforceable contract. Thus, the only issue that the circuit court was left to determine was whether or not Respondent's claims fell within the scope of the Mediation and Arbitration Provision included in the Agreement.

"[N]ot all situations require a detailed order, and the trial court's form order may be sufficient if the appellate court can ascertain the basis for the trial court's ruling from the record on appeal." *Porter v. Labor Depot*, 643 S.E.2d 96, 100, 372 S.C. 560 (S.C. App. 2007) (citing *Clark v. S.C. Dep't of Pub. Safety*, 353 S.C. 291, 578 S.E.2d 16 (Ct.App.2002) (stating, "[T]here

is no blanket requirement that the trial court set forth a separate explanation on all of its rulings."); *see also Bailey v. Segars*, 346 S.C. 359, 550 S.E.2d 910 (Ct.App.2001) *cert. dismissed as improvidently granted* 354 S.C. 57, 579 S.E.2d 605 (2003) (holding a form order stating only that the appellant's post-trial motions for JNOV and new trial were denied was, together with the record of the proceedings, adequate to enable appellate review). Here, the record is adequate to enable an appellate review.

As this Court will see, the Respondent's Memorandum in Support of the Motion to Dismiss and/or Stay and Compel Mediation and Arbitration, along with the hearing transcript from oral arguments on September 16, 2021, show that the issue which the circuit court ruled on is whether or not Respondent's claims fall within the scope of the Arbitration and Mediation Provision. Put simply, there was one decision for the circuit court to make – that is, whether the claims fell within the scope to require arbitration – and, thus, its September 16, 2021 Order denying the Motion to Dismiss and/or Stay and Compel Mediation and Arbitration found that the claims were not within the scope of the Mediation and Arbitration Provision in the Agreement. The September 16, 2021 Order simply denied Appellants' scope argument that was presented in their Memorandum in Support of the Motion to Dismiss and/or Stay and Compel Mediation and Arbitration and oral presentation at the hearing. The September 16, 2021 Order could only rule upon the scope argument because that was the only issue presented for the circuit court to rule on. Appellants are seeking review of that very issue and there is no doubt that there is sufficient information in the record for this Court to conduct a proper review of the same.[1] The fact that Respondent states that

[1] Appellants are including the Motion to Dismiss and/or Stay and Compel Mediation and Arbitration, Memorandum in Support of the Motion to Dismiss and/or Stay and Compel Mediation and Arbitration, Hearing Transcript, and the September 16, 2021 Order as exhibit hereto, which show that Appellants' entire basis for arbitration was centered around the scope argument. Further, this information is provided in accordance with S.C. App. Ct. R. 240(c)(3). Of note, Respondent failed to provide any exhibits in support of its Motion to Dismiss, as is required by the aforementioned Rule.

the September 16, 2021 Order "makes no mention of the arbitration issue Appellants raise" is factually inaccurate when considering the entire record on appeal, which this Court must do. In sum, this appeal should be allowed to move forward as the circuit court undoubtedly ruled on the issue raised on appeal. Accordingly, Appellants' issue on appeal is ripe for this Court's review.

B. There is no preservation issue in this Case.

Respondent next argues that Appellants failed to preserve the issue by not moving for reconsideration pursuant to Rule 59(e) or seeking any other post-judgment relief. Respondent states that "Appellants made not attempt to convince the circuit court that it ruled incorrectly in its September 16, 2021 Order" and, on that basis, argued that Appellants failed to preserve their arbitration arguments for review. However, this is inaccurate and, in fact, established case law fails to support Respondent's position.

As presented in Respondent's Motion to Dismiss, in discussing the need for a Rule 59(e) motion, the South Carolina Supreme Court explained that:

> "[t]he losing party must first try to convince the lower court it has ruled wrongly and then, if that effort fails, convince the appellate court that the lower court erred. This principle underlies the long-established preservation requirement that the losing party generally must both present his issues and arguments to the lower court and obtain a ruling before an appellate court will review those issues and arguments....
>
> If the losing party has raised an issue in the lower court, but the court fails to rule upon it, the party must file a motion to alter or amend the judgment in order to preserve the issue for appellate review.... Imposing this preservation requirement on the appellant is meant to enable the lower court to rule properly after it has considered all relevant facts, law, and arguments. The requirement also serves as a keen incentive for a party to prepare a case thoroughly. It prevents a party from keeping an ace card up his sleeve intentionally or by chance in the hope that an appellate court will accept that ace card and, via a reversal, give him another opportunity to prove his case.

Elam v. S.C. Dep't of Transp., 361 S.C. at 24, 602 S.E.2d at 780, fn. 4 (2004) (quoting I'*On, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 421, 526 S.E.2d 716, 724 (2000)).

The circuit court had all the facts, law, and arguments in order to make its decision and, as discussed above, it made its decision to deny arbitration. Further, there was no ace card up Appellants' sleeve as its entire argument – whether or not the claims fall within the scope of the Mediation and Arbitration Provision of the Agreement – was presented to the circuit court.

Additionally, "[p]ost-trial motions are not necessary to preserve issues that have been ruled upon at trial; they are used to preserve those that have been raised to the trial court but not ruled upon." *Bailey v. Segars*, 346 S.C. 359, 550 S.E.2d 910 (S.C. App. 2001) (citing *Wilder Corp. v. Wilk*e, 330 S.C. 71, 77, 497 S.E.2d 731, 734 (1998); see also *Hubbard v. Rowe*, 192 S.C. 12, 19, 5 S.E.2d 187, 189 (1939) ("In matters of appeal, so far as it appears, all that this Court has ever required is that the questions presented for its decision must first have been fairly and properly raised in the lower Court and passed upon by that Court"). As stated repeatedly, a complete record containing the Motion to Dismiss and/or Compel Mediation and Arbitration, Memorandum in support thereof, transcript of oral arguments, and the circuit court's September 16, 2021 Order are present for review. The Court should consider the full record in determining whether the issue is preserved for appeal. Once the Court reviews the full record, it should find that the preservation argument raised by Respondent fails.

III. CONCLUSION

It is clear from the full record on appeal that the circuit court addressed the very issue which Appellants have raised before this Court, contrary to Respondent's assertion that "[t]he circuit court did not address arbitration in its September 16, 2021 Order and has yet to rule as to whether Respondent's claims fall within the scope of the Mediation and Arbitration Provision included in the Agreement at issue." Put simply, the Court must review the full record, not just the September 16, 2021 Order as was argued by Respondent. Also, there is no requirement for a party to file a

motion to reconsider or other post-judgment motion in order to preserve an appeal. As stated, the issue on appeal is preserved when a full review of the record is conducted. Accordingly, Respondent's Motion to Dismiss should be denied and Appellants' appeal should move forward.

Respectfully submitted,

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Attorneys for Appellants

May 26, 2022

EXHIBITS TO APPELLANTS' RESPONSE TO RESPONDENT'S MOTION TO DISMISS

MOTION TO DISMISS AND/OR STAY AND COMPEL MEDIATION AND ARBITRATION

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

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Attorneys for Defendants

Charleston, South Carolina
August 25, 2021

INDEPENDENT CONTRACTOR AGREEMENT

THIS INDEPENDENT CONTRACTOR AGREEMENT is made and entered into on the 22nd 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 complaint 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.

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

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: JGHedges
Date: 11/27/17

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

MEMORANDUM IN SUPPORT OF MOTION TO DISMISS AND/OR STAY AND COMPEL MEDIATION AND ARBITRATION

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[.]"[1] *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.

[1] 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 contact." 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 withing 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-

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

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Attorneys for Defendants

Charleston, South Carolina
September 13, 2021

INDEPENDENT CONTRACTOR AGREEMENT

THIS INDEPENDENT CONTRACTOR AGREEMENT is made and entered into on the 22nd 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 complaint 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.

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

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: JGHedges
Date: 11/27/17

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

SEPTEMBER 16, 2021
HEARING TRANSCRIPT

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

COURT OF COMMON PLEAS
2021-CP-23-02564

JEREMY WILSON,
PLAINTIFF,

vs.

JH3 CONSULTING, LLC, AND
JEFFREY G. HEDGES,
DEFENDANTS.

TRANSCRIPT OF RECORD

ORIGINAL

September 16, 2021
Greenville, South Carolina

B E F O R E:

THE HONORABLE ALEX KINLAW, JR., JUDGE.

A P P E A R A N C E S:

BEAU B. BROGDON, ESQ.
MOLLY H. CASH, ESQ.
Attorneys for the Plaintiff

S. TYLER GRAVES, ESQ.
LOGAN S. DAVIS, ESQ.
Attorneys for the Defendants

HOLLIE M. JENKINS
Circuit Court Reporter

I N D E X

(There were no witnesses called.)

E X H I B I T S

(There were no exhibits introduced.)

PROCEEDINGS

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

Anybody here on that?

MR. GRAVES: Yes, Your Honor.

THE COURT: Come forward.

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

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

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

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

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

THE COURT: Hold on one second.

MR. GRAVES: Yes, sir.

(Pause.)

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

MR. GRAVES: Tyler Graves and Logan Davis.

THE COURT: Stephen Tyler Graves?

MR. GRAVES: Yes, Your Honor.

THE COURT: And Logan Steele Davis?

MR. DAVIS: Yes, Your Honor.

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

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

THE COURT: Molly Cash.

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

Okay. This is Defendants motion to dismiss.

MR. GRAVES: Yes, Your Honor.

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

MR. GRAVES: Good morning.

May it please the Court.

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

But you go ahead.

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

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

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

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

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

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

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

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

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

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

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

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

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

I'll, also, note the last sentence there, 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 a court or any similar forum.

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

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

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

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

And, Your Honor, I would just note there's some good case law -- federal case law that talks about the broad arbitration clause and the significant relationship. And I would just quote here, The test is not whether a claim arose under one agreement or another, but whether a significant relationship exists between the claim and agreement containing the arbitration clause. The 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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

THE COURT: Okay.

MR. BROGDON: Good morning, Your Honor.

May it please the Court.

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

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

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

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

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

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

as it relates to that contract.

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

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

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

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

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

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

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

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

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

court.

THE COURT: All right. Anything in reply?

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

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

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

MR. GRAVES: Yes, sir.

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

MR. GRAVES: Yes, Your Honor.

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

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

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

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

MR. GRAVES: Yes, Your Honor.

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

MR. GRAVES: Yes, Your Honor.

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

So I don't --

MR. GRAVES: Yes, Your Honor.

THE COURT: I -- go ahead.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

THE COURT: Okay. Anything else?

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

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

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

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

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

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

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

What do you prefer?

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

THE COURT: A Form 4?

MR. GRAVES: No objection, Your Honor.

THE COURT: A Form 4, Counsel?

MR. GRAVES: Yes. Yes, Your Honor.

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

**********END OF TRANSCRIPT OF RECORD**********

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

Hollie M. Jenkins

Hollie M. Jenkins, Court Reporter

SEPTEMBER 16, 2021
FORM 4 ORDER

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Greenville
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2021CP2302564

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), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ 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 Bagnal 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

IN THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM GREENVILLE COUNTY
COURT OF COMMON PLEAS

THE HONORABLE ALEX KINLAW, JR., Circuit Court Judge

Appellate Case No. 2021-001096

Jeremy Wilson, *Respondent*,

v.

Jeffrey G. Hedges and JH3 Consulting, LLC, *Appellants*.

PROOF OF SERVICE

I certify that I have served a copy of Appellants' Response to the Motion to Dismiss by depositing it in the United States Mail, postage prepaid, on May 26, 2022, addressed to Respondent's attorneys of record at Campbell Teague LLC located at 16 W. North Street, Greenville, South Carolina 29601.

Respectfully submitted,

GRAVES & DAVIS, LLC

s/*Logan S. Davis*
Logan S. Davis (SC Bar No. 104429)
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Attorneys for Appellants

May 26, 2022