UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 1:18-cv-24414-GAYLES/LOUIS

ALFRED J. GOLDEN, JR.,

Plaintiff/Counter-Defendant,

v.

UNIVERSITY OF MIAMI, a Florida not-for-profit corporation,

Defendant/Counter-Plaintiff.
_____/

AMENDED ORDER

THIS CAUSE comes before the Court on Magistrate Judge Lauren Fleischer Louis's Report and Recommendation (the "Report") [ECF No. 63] on Defendant/Counter-Plaintiff University of Miami's (the "University") Motion for Final Summary Judgment (the "Motion") [ECF No. 21]. On October 24, 2018, Plaintiff Alfred J. Golden, Jr. ("Golden"), filed his Complaint against the University for breach of contract relating to an employment agreement between the parties. [ECF No. 1]. The Motion was referred to Magistrate Judge Louis pursuant to 28 U.S.C. § 636(b)(1)(B) for a Report and Recommendation. [ECF No. 54]. On June 19, 2020, Judge Louis issued her Report recommending that the Motion be granted because the contract's Third Amendment is unambiguous and reflects that the buyout payment is the dollar amount reflected for the year of termination and does not include a summation of the remaining years. Golden timely filed his objections, [ECF No. 64], to which the University responded. [ECF No. 65].

A district court may accept, reject, or modify a magistrate judge's report and recommendation. 28 U.S.C. § 636(b)(1). Those portions of the report and recommendation to which objection is made are accorded *de novo* review, if those objections "pinpoint the specific findings

that the party disagrees with." *United States v. Schultz*, 565 F.3d 1353, 1360 (11th Cir. 2009); *see also* Fed. R. Civ. P. 72(b)(3). Any portions of the report and recommendation to which *no* specific objection is made are reviewed only for clear error. *Liberty Am. Ins. Grp., Inc. v. WestPoint Underwriters, L.L.C.*, 199 F. Supp. 2d 1271, 1276 (M.D. Fla. 2001); *accord Macort v. Prem, Inc.*, 208 F. App'x 781, 784 (11th Cir. 2006).

Having conducted a *de novo* review of the record, the Court agrees with Judge Louis's well-reasoned analysis and conclusion that the Motion should be granted. After considering Golden's objections, the Court finds that they are without merit.[1] The Court agrees that the Third Amendment is unambiguous and not susceptible to multiple interpretations. *See Am. Med. Int'l, Inc. v. Scheller*, 462 So. 2d 1, 7 (Fla. 4th DCA 1984) ("A true ambiguity does not exist merely because a contract can possibly be interpreted in more than one manner."). The Court further agrees with Judge Louis's finding that the Third Amendment unambiguously requires the University to pay Golden $2 million for terminating his contract in Year 5 of the nine-year contract.

Notably, the Third Amendment's $2 million termination payment is consistent with the prior iterations of Golden's termination payment provision. Pursuant to the original employment agreement, Golden would have received $1 million if terminated with four years remaining in his contract term ($250,000 x four years left in the contract term). [*See* ECF No. 1-3 at 8]. Pursuant to the first and second amendments to the employment agreement, Golden would have received $2 million if terminated with four years remaining in his contract term ($500,000 x four years left in

[1] The Court notes that Golden's "intermediate ambiguity" objection is not proper because "[a]rguments that are not raised before a magistrate judge cannot be raised for the first time as an objection to a report and recommendation." *Starks v. United States*, Nos. 09-CIV-22352 & 07-CR-20588, 2010 WL 4192875, at *3 (S.D. Fla. Oct. 19, 2010) (citing *United States v. Cadieux*, 324 F. Supp. 2d 168 (D. Me. 2004)); *see also Worley v. City of Lilburn*, 408 F. App'x 248, 253 (11th Cir. 2011) ("[T]he district court ha[s] the discretion to decline to consider the arguments not presented to the magistrate judge . . . ."). Golden was aware of the intermediate ambiguity theory as he briefly mentioned it in a footnote in his Response to the University's Motion for Summary Judgment; however, "addressing a legal argument only in a footnote is an incorrect place for substantive arguments on the merits." *Espinoza v. Galardi S. Enters., Inc.*, No. 14-CIV-21244, 2018 WL 1729757, at *4 (S.D. Fla. Apr. 10, 2018) (citations omitted).

the contract term). *See* [ECF Nos. 1-4 at 7 & 1-5]. Therefore, Golden's demand for $6 million here is not only inconsistent with the clear language of the Third Amendment, but is wholly inconsistent with the parties' previous agreements and results in the sort of "fanciful, inconsistent, and absurd" interpretation that "the trial court [is] to prevent . . . ." *Am. Med. Int'l, Inc.*, 462 So. 2d at 7. The Court therefore agrees that the Motion should be granted for the reasons stated in Judge Louis's well-reasoned Report.

CONCLUSION

Accordingly, it is **ORDERED AND ADJUDGED** as follows:

(1) Magistrate Judge Lauren Fleischer Louis's Report and Recommendation on Defendant/Counter-Plaintiff University of Miami's Motions for Final Summary Judgment, [ECF No. 63], is **AFFIRMED AND ADOPTED** and incorporated into this Order by reference;

(2) Defendant University of Miami's Motion for Final Summary Judgment, [ECF No. 21], is **GRANTED**;

(3) All pending motions are **DENIED as moot**;

(4) Defendant University of Miami shall file a proposed Final Judgment for the Court's consideration on or before **September 21, 2020**; and

(5) This action is **CLOSED** for administrative purposes.

DONE AND ORDERED in Chambers at Miami, Florida, this 1st day of September, 2020.

DARRIN P. GAYLES
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 1:18-CV-24414-GAYLES/LOUIS

ALFRED J GOLDEN, JR.,

Plaintiff,

vs.

UNIVERSITY OF MIAMI, a Florida not-for-profit corporation,

Defendant.
_____/

UNIVERSITY OF MIAMI, a Florida not-for-profit corporation,

Counter-Plaintiff,

vs.

ALFRED J. GOLDEN, JR.,

Counter-Defendant.
_____/

REPORT AND RECOMMENDATION

This cause came before the Court upon Defendant's Motion for Summary Judgment on Plaintiff's breach of contract claim and Defendant's Counterclaim for Declaratory Relief (ECF No. 21). The Motion was referred to the undersigned United States Magistrate Judge, pursuant to 28 U.S.C. § 636 and the Magistrate Judge Rules of the Local Rules of the Southern District of Florida, by the Honorable Darrin P. Gayles, United States District Judge, for Report and Recommendation (ECF No. 54). The Motion has been fully briefed. Upon consideration of the pertinent parts of the record and being otherwise fully advised in the premises, the undersigned recommends that

Defendant's Motion for Summary Judgment and Counterclaim for Declaratory Relief be **GRANTED.**

I. BACKGROUND[1]

Al Golden ("Golden" or "Plaintiff") was hired by the University of Miami ("University" or "Defendant"), a Florida not-for-profit corporation operating a private university, as its head football coach in December of 2010 (ECF No. 22 ¶ 1). Golden entered into his first Employment Agreement (the "Original Agreement") with the University on April 27, 2011, which provided for an employment term of five years, a base compensation of $150,000 per year, and annual Guarantee payments totaling $6.75 million over Golden's five-year term (*Id.*). Paragraph 7 of the Original Agreement further provided that the University retained the right to terminate Golden's employment prior to the culmination of the five-year term, but the University would pay him a termination amount equal to the following formula: "[250,000 * (Number of years left in the Term)][.]" (ECF No. 1-3 at 8). The University was to pay Golden the appropriate termination payment in equal monthly installments over the number of months remaining on the Original Agreement's five-year term (*Id.* at 9).

The parties executed a First Amendment to the Original Agreement (the "First Amendment") on February 1, 2012 (ECF No. 1-4 at 1). The First Amendment provided a replacement to Paragraph 7 of the Original Agreement which included, among other modifications, an extension of Golden's five-year term by four additional years to January 31, 2020, an increase in Golden's base compensation to $160,000 per year, and an increase in Golden's annual Guarantee payments between $375,000 and $525,000 per year (ECF No. 22 ¶ 5). The First Amendment further created a retention bonus scheme that would reward Golden with $900,000 if he remained as head coach through the fifth term year and another $900,000 if he remained as head coach through the ninth term year (*Id.*). The First Amendment also provided a termination payment provision expressed as the following

[1] The facts are undisputed unless otherwise noted.

formula: "[500,000 * Number of years left in the term)][.]" (ECF No. 1-4 at 7). The First Amendment still provided that the University was to pay Golden's termination payment in equal monthly installments for the remaining months left in the lengthened term (*Id.* at 8). The parties later executed a Second Amendment to the Original Agreement (the "Second Amendment") on August 1, 2012, which did not modify Golden's compensation and termination payment provisions as contained in the First Amendment (ECF No. 1-5).

On December 12, 2012, Blake James, the Athletic Director of the University, sent an e-mail to Golden proposing an increase in Golden's termination payments (ECF No. 41 ¶ 45; No. 47 ¶ 45). The e-mail proposal contained a list of termination dates and corresponding termination payments that mirrored the termination payment provision in a later and final Third Amendment to the Original Agreement ("the Third Amendment") (*Id.*). James later testified that, to the best of his knowledge, he was the only individual directly negotiating the contents of the Third Amendment's termination payment provisions with Golden (ECF No. 35-1 at 37–38). The University does not dispute that James was involved in negotiations with Golden, but disputes that James was the only individual negotiating the Third Amendment with Golden (ECF No. 47 ¶ 48). The Third Amendment was finalized on December 18, 2012 (ECF No. 41 ¶ 49).

On February 1, 2013, the final Third Amendment took effect (ECF No. 22 ¶ 9). The Third Amendment increased Golden's Guarantee payments by $565,000 per year, leading to a total Guarantee of $21.4 million (*Id.* ¶ 10). The Third Amendment also increased the reward Golden would receive pursuant to the retention-scheme for staying through the ninth term year to $2 million (*Id.*). The Third Amendment modified Golden's termination payment as contained in Paragraph 7 of the Original Agreement by providing the following:

> **2. <u>Paragraph 7 of the Employment Agreement</u>.** Paragraph 7 of the Employment Agreement shall be replaced with the following paragraphs:

> The University may terminate Mr. Golden's employment at any time. If the University terminates Mr. Golden prior to expiration of the Term, he will nevertheless be paid by the University a sum (the "Termination Payment") equal to the following formula:

Year 3	$2,000,000
Year 4	$2,000,000
Year 5	$2,000,000
Year 6	$1,000,000
Year 7	$1,000,000
Year 8	$1,000,000
Year 9	$1,000,000

(ECF No. 1-6 at 3–5).

The Third Amendment contained a conflict clause which provided the following: "In the event of a conflict between the terms of this Third Amendment and the terms of the First Amendment, the Second Amendment, Employment Agreement and/or the Guarantee Agreement, the terms of this Third Amendment shall control." (ECF No. 1-6 at 7).

The University terminated Golden's employment on October 25, 2015, a date corresponding to Year 5 in the Third Amendment's termination payment provisions (ECF No. 22 ¶ 13). The University began making monthly payments to Golden that were meant to total a $2 million termination payment after the passage of the fifty-one months remaining in Golden's employment term (*Id.*).

On January 27, 2017, Golden's agent, Brett Senior, informed the University that the Third Amendment instead provided for a $6 million termination payment following Golden's termination in Year 5 and that the University's monthly payments were inadequate (*Id.* ¶ 17). Senior supported his understanding that the termination payment should be a summation of amounts in the table (above)

with handwritten notes on a copy of the Third Amendment's termination payment provisions, which translate its payment amounts to quantities reflecting what Golden believed to be the correct termination payment amount (ECF No. 41 ¶ 47). On February 6, 2017, the University's General Counsel, Aileen Ugalde, responded to Senior's letter and rejected Golden's demand for increased monthly payments in accordance with a $6 million termination payment (ECF No. 22 ¶ 18).

On October 24, 2018, Golden filed a single breach of contract claim against the University (ECF No. 1). Golden's claim is based on the University's alleged failure to pay Golden the appropriate and full termination payment following his early termination as contained in the Third Amendment's termination payment provisions (*Id.*). As part of his claim, Golden has produced a declaration by an expert witness affirming that the University's $2 million termination payment is inadequate to protect the value of Golden's employment contract and that no competent practitioner would accept such an arrangement; the University disputes his opinion (ECF No. 41 ¶ 53; No. 47 ¶ 53). The expert witness further affirmed that the University's $2 million buyout is inconsistent with the University's goal of retaining Golden as head coach, which the University also disputes (ECF No. 41 ¶ 55; No. 47 ¶ 55). The University, in its answer to Golden's claim, asserted a Counterclaim for Declaratory Relief (ECF No. 5) requesting the court's entry of judgment declaring that the University was only obligated to pay $2 million to Golden following his early termination on October 25, 2015 pursuant to the monthly installment provisions in the Third Amendment.

II. ANALYSIS

A. Legal Standard

Pursuant to Rule 56(a) of the Federal Rules of Civil Procedure, "[t]he court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). The movant "bears the initial responsibility of informing the district court of the basis for its motion, and identifying those

portions of [the record] which it believes demonstrate the absence of a genuine issue of material fact." *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). To discharge this burden, the movant must point out to the Court that there is an absence of evidence to support the nonmoving party's case. *Id*. at 325.

After the movant has met its burden under Rule 56(c), the burden of production shifts, and the nonmoving party "must do more than simply show that there is some metaphysical doubt as to the material facts." *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986). The non-moving party must come forward with "specific facts showing a genuine issue for trial." *Matsushita*, 475 U.S. at 587.

"A fact [or issue] is material for the purposes of summary judgment only if it might affect the outcome of the suit under the governing law." *Kerr v. McDonald's Corp.*, 427 F.3d 947, 951 (11th Cir. 2005) (internal quotations omitted). Furthermore, "[a]n issue [of material fact] is not 'genuine' if it is unsupported by the evidence or is created by evidence that is 'merely colorable' or 'not significantly probative.'" *Flamingo S. Beach I Condo. Ass'n, Inc. v. Selective Ins. Co. of Southeast*, 492 F. App'x 16, 26 (11th Cir. 2013) (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249–50 (1986)). "A mere scintilla of evidence in support of the nonmoving party's position is insufficient to defeat a motion for summary judgment; there must be evidence from which a jury could reasonably find for the non-moving party." *Id.* at 26-27 (citing *Anderson*, 477 U.S. at 252).

In considering a motion for summary judgment, the Court must evaluate the evidence and draw all inferences in the light most favorable to the nonmoving party. *Matsushita*, 475 U.S. at 587. A court will not weigh conflicting evidence at this stage of the proceedings. *Skop v. City of Atlanta*, 485 F.3d 1130, 1140 (11th Cir. 2007). If the moving party shows "that, on all the essential elements of its case on which it bears the burden of proof at trial, no reasonable jury could find for the nonmoving party" then "it is entitled to summary judgment unless the nonmoving party, in response,

comes forward with significant, probative evidence demonstrating the existence of a triable issue of fact." *Rich v. Sec'y, Fla. Dept. of Corr.*, 716 F.3d 525, 530 (11th Cir. 2013) (citation omitted).

B. Discussion

Defendant's Motion for Summary Judgment contends that the contract is unambiguous and entitles Defendant to judgment. "Contract interpretation is a question of law to be decided by the court by reading the words of a contract in the context of the entire contract and construing the contract to effectuate the parties' intent." *Entourage Custom Jets, LLC v. Air One MRO, LLC*, No. 18-22061-WILLIAMS, 2020 WL 2308320, at *2 (S.D. Fla. May 8, 2020) (quoting *Feaz v. Wells Fargo Bank, N.A.*, 745 F.2d 1098, 1104 (11th Cir. 2014)) (internal quotation marks omitted). Thus, "[t]he initial determination of whether the contract term is ambiguous is a question of law for the court." *Id.* (quoting *Strama v. Union Fid. Life Ins. Co.*, 793 So. 2d 1129, 1131 (Fla. 1st DCA 2001)).

The undersigned agrees that the Third Amendment is unambiguous. As the provision quoted above shows, the termination payment provision affords Defendant the right to terminate Golden at any point during the contract period. The provision specifies that if he is terminated, he will nevertheless be paid by the Defendant a sum equal to "the following formula;" what follows is a simple table that identifies each year left in the contract period on the left and a corresponding single dollar figure located in a cell to the immediate right of the termination year (*Id.*). Each termination year and its corresponding amount is contained in separate cells from all other termination years (*Id.*). The table includes no symbols, mathematical or otherwise, to express any relationship between the figures on the right side of the table. The only relationship expressed is between the termination year number and the respective sum for that year. The Third Amendment unambiguously requires the University to pay Golden $2 million for terminating him in Year 5.

Plaintiff disputes Defendant's characterization of the contract as unambiguous and thus argues that parol evidence may be considered to evidence the parties' true intent, specifically, that the parties

intended the amounts provided for each year remaining in Golden's employment term to be added together.

"A contract is ambiguous where it is susceptible to two different interpretations, each one of which is reasonably inferred from the terms of the contract." *John M. Floyd & Associates, Inc. v. First Fla. Credit Union*, 443 F. App'x 396, 399 (11th Cir. 2011) (quoting *Frulla v. CRA Holdings, Inc.*, 543 F.3d 1247, 1252 (11th Cir. 2008)) (internal quotation marks omitted). However, "[a]n interpretation is not reasonable if it requires rewriting the contract to add language that a party omitted and in order to impose an obligation on the other party that was not in the original bargain." *Id*. (citing *Ferreira v. Home Depot/Sedgwick CMS*, 12 So. 3d 866, 868 (Fla. 1st DCA 2009)). Accordingly, "where a contract is silent as to a particular matter, courts should not, under the guise of construction, impose on parties contractual rights and duties which they themselves omitted." *BMW of N. Am., Inc. v. Krathen*, 471 So. 2d 585, 587 (Fla. 4th DCA 1985).

Plaintiff argues that the termination payment provision in the Third Amendment may be reasonably interpreted as tabulating amounts that are to be added together for each of the years remaining in the contract period in the event of termination (ECF No. 40 at 7). Plaintiff's argument relies on the fact that in the Original Agreement, as well as the First Amendment, the contract defined the termination payment owed to Golden as an amount multiplied by the number of years remaining in the contract period and expressed the calculation as a formula, e.g., "$500,000 * (Number of years left in the term"). Plaintiff argues that the language in the Third Amendment, specifically, the use of the word "formula", reflects the parties' intent that arithmetic be applied in a manner comparable to the prior versions of the provision (*Id*. at 9–10).

Plaintiff relies on dictionary definitions of the word "formula." For example, Plaintiff invokes Merriam Webster's definition of "formula"— "a general fact, rule, or principle expressed in usually mathematical symbols." (ECF No. 40-1 at 3). Plaintiff also invokes another definition of "formula"

provided by the American Heritage Dictionary of the English Language, which defines "formula" as "[a] statement, especially an equation, of a fact, rule, principle, or other logical relation." (ECF No. 40-1 at 6). Plaintiff argues the aforementioned definitions of "formula" "denote[] that one must use math to arrive at the correct buyout amount." (ECF No. 40 at 10).

By focusing on the use of "formula" in the contract to support his interpretation, Plaintiff seeks to establish a form of ambiguity Florida courts have recognized as patent ambiguity, which "appears on the face of the instrument, arising from defective, obscure, or insensible language." *MDS (Canada) Inc. v. Rad Source Technologies, Inc.*, 720 F.3d 833, 844 (11th Cir. 2013) (citing *Ace Elec. Supply Co. v. Terra Nova Elec., Inc.*, 288 So. 2d 544, 547 (Fla. 1st DCA 1973)). In cases of patent ambiguity, courts are precluded from relying on extrinsic evidence to elucidate the parties' intentions, *Id.*, and "resolve the dispute by reviewing the plain language of the contract, which is the 'best evidence' of the parties' intention." *Handi-Van, Inc. v. Broward Cty., Fla.*, No. 08-62080-CIV, 2010 WL 1223776, at *5 (S.D. Fla. Mar. 29, 2010), *aff'd*, 445 F. App'x 165 (11th Cir. 2011) (quoting *Republic Servs., Inc. v. Calabrese*, 939 So. 2d 225, 226 (Fla. 5th DCA 2006)).

The undersigned acknowledges that the use of "formula," if viewed in a vacuum, could imply application of some sort of mathematical calculation, such as Plaintiff's proposed summing. However, an interpretation of the table as lacking a mandate for a mathematical calculation, such as summing, is perfectly consistent with Plaintiff's cited definitions of "formula"—for example, a total payment of $2 million for early termination in Year 3 could accurately be characterized as "[a] statement, especially an equation, of a fact . . . or other logical relation." If Golden was terminated in Year 3, his payment would be "equal to" $2 million—a proposition that the undersigned finds sufficient, with no need for further arithmetic, to constitute a statement of fact or logical relation. Therefore, the undersigned finds the Third Amendment's termination payment provisions unambiguously provide that Golden's termination payment is meant to equal the dollar amount

corresponding to his termination year, rather than, as Plaintiff argues, the sum of all the dollar amounts for all the years that his employment was cut short.

Moreover, courts do not interpret contractual terms in isolation— "[i]n reviewing a contract . . . the entire contract must be reviewed as a whole without fragmenting any segment or portion." *MDS (Canada) Inc. v. Rad Source Technologies, Inc.*, 822 F. Supp. 2d 1263, 1296 (S.D. Fla. Sept. 30, 2011), *aff'd*, 720 F.3d 833 (11th Cir. 2013) (citing *Jones v. Warmack*, 967 So. 2d 400, 402 (Fla. 1st DCA 2007)). In other words, "a court should read the contract as a whole, giving effect to each of the various provisions of the agreement if it can reasonably be done." *DeMarco v. T.D. Bank, N.A.*, No. 16-80442-CIV, 2017 WL 2892255, at *4 (S.D. Fla. Apr. 26, 2017) (citing *MDS (Canada) Inc.*, 822 F. Supp. 2d at 1296)). Plaintiff's construction of the termination provision imposes meaning from the parties' prior agreements and argues that the earlier versions evidence the parties' understanding of the word "formula." This construction ignores that the Third Amendment explicitly provides that the termination payment provisions in Paragraph 7 of the Original Agreement were to be "replaced" with the Third Amendment's termination payment provisions (ECF No. 1-6 at 3–4). Furthermore, the Third Amendment contained a conflict clause providing that the Third Amendment would control over the Original Agreement as well as all prior amendments in the event of an inconsistency between the agreements (ECF No. 1–6 at 7).

Plaintiff further attempts to import ambiguity into the contract's buyout clause by invoking the concept of latent ambiguity, which arises when "a contract fails to specify the rights or duties of the parties in certain situations and extrinsic evidence is necessary for interpretation or a choice between two possible meanings." *MDS (Canada) Inc.*, 720 F.3d at 844 (quoting *Forest Hills Util., Inc. v. Pasco Cty.*, 536 So. 2d 1117, 1119 (Fla. 2nd DCA 1988)). However, latent ambiguity only manifests when parties attempt to apply a contract to a situation or set of facts for which the contract fails to account. *See Handi-Van Inc. v. Broward Cty. Fla.*, 445 F. App'x 165, 169 (11th Cir. 2011)

(finding a latent ambiguity in a contract providing that a county would receive for each ride given by a paratransit company to a disabled passenger a rider's fare plus the county's reimbursement portion while the company retained the collection of the rider's fare, but failed to address whether the county's increase of the rider's fare would affect the county's reimbursement portion); *Nature's Products, Inc. v. Natrol, Inc.*, 990 F. Supp. 2d 1307, 1315 (S.D. Fla. Oct. 7, 2013) (finding a latent ambiguity where the parties' contract, providing for the manufacturing of wheat/gluten-free products, failed to specify the parties' rights and duties regarding unpaid invoices in the "instant situation where the [defendant's products] have been manufactured, delivered, and redistributed before the revelation that those [products] contain wheat/gluten."). Here, however, the Third Amendment's termination payment provisions fully provide for the duties of Golden and the University in the situation forming the basis of this dispute; a payout by the University following Golden's early termination is precisely what the Third Amendment addresses with its termination payment provisions (ECF No. 1-6 at 3–4). Therefore, the "[latent ambiguity] principle is not applicable here because the parties' rights and obligations are clearly stated in the [ ] agreement, and there is no ambiguity that would warrant the introduction of parol evidence." *Hashwani v. Barbar*, 822 F.2d 1038, 1040 (11th Cir. 1987).

Finally, Plaintiff argues that extrinsic evidence supports his interpretation of the termination payment provision (ECF No. 40 at 14–16), specifically: (1) an e-mail from an individual negotiating with Golden where the termination payments that subsequently formed the basis for the Third Amendment's termination payment provisions are presented as an "increase" in Golden's buyout (ECF No. 39-4); (2) written notes by Golden's agent on a copy of the Third Amendment's termination payment table translating its payment amounts to quantities reflecting Plaintiff's proposed "summing up" method (ECF No. 37-3 at 59); (3) affirmations by Plaintiff's expert witness that the termination payments in the Third Amendment's table are inadequate termination payments when compared with buyout-to-contract value ratios for coaches in comparable college football programs (ECF No. 33-1

¶¶ 40–42); (4) affirmations by Plaintiff's expert that accepting a decreased buyout for a higher salary would be "illogical and foolish" (*Id.* ¶¶ 44, 45); and (5) affirmations by Plaintiff's expert that the table's termination payments are inconsistent with Defendant's goal of retaining Golden and discouraging him from pursuing alternative employment (*Id.*). Such extrinsic evidence could be relevant only if the contract was ambiguous to begin with, as "[c]ourts may consider extrinsic evidence only when confronting an ambiguous contract provision, and courts are barred from using evidence to create an ambiguity to rewrite a contractual provision[.]" *Vencor Hospitals v. Blue Cross Blue Shield of R.I.*, 284 F.3d 1174, 1179 (11th Cir. 2002) (quoting *J.C. Penney Co., Inc. v. Koff*, 345 So. 2d 732, 735 (Fla. 4th DCA 1977)) (internal quotation marks omitted). *See Alhassid v. Bank of Am., N.A.*, 688 F. App'x 753, 760 (11th Cir. 2017) ("[P]arol evidence is inadmissible to vary or contradict the clear and unambiguous language of a contract[.]") (citing *J.M. Montgomery Roofing Co. v. Fred Howland, Inc.*, 98 So. 2d 484, 485–86 (Fla. 1957). Because the undersigned has found the Third Amendment's termination payment provisions unambiguous, the undersigned will not consider Plaintiff's extrinsic evidence, as doing so would only create ambiguity in an otherwise unambiguous provision.

III. RECOMMENDATION

For the foregoing reasons, the undersigned recommends that Defendant's Motion for Summary Judgment and Counterclaim for Declaratory Relief (ECF No. 21) be **GRANTED**.

Pursuant to Local Magistrate Rule 4(b), the parties have fourteen (14) days to serve and file written objections, if any, with the Honorable Darrin P. Gayles, United States District Judge. Failure to file objections by that date shall bar the parties from *de novo* determination by the District Judge of any factual or legal issue covered in the Report and shall bar the parties from challenging on appeal the District Judge's Order based on any unobjected-to factual or legal conclusions included in the

Report. *See* 28 U.S.C. § 636(b)(1); 11th Cir. Rule 3-1; *Patton v. Rowell*, 2017 WL 443634 (11th Cir. Feb. 2, 2017).

RESPECTFULLY SUBMITTED in Chambers this 19th day of June 2020.

LAUREN LOUIS
UNITED STATES MAGISTRATE JUDGE