

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

STERLING SMALL MARKET EDUCATION )  
FUND, L.P., SRC INTERMEDIATE )  
HOLDINGS, INC., and STUDENT )  
RESOURCE CENTER, LLC, )

Plaintiffs, )

v. )

MICHAEL PERIK, NICOLE ROWE )  
COLCLASURE, JOHN HASELEY, DANIEL )  
JONES, HIGHER EDUCATION PARTNERS, )  
LLC, RRGTHREE, LLC, USS GUARANTOR, )  
LLC, and MWJ HOLDINGS, LLC, )

Defendants, Counterclaim )  
Plaintiffs and Third-Party )  
Plaintiffs, )

v. )

STERLING SMALL MARKET EDUCATION )  
FUND, L.P., SRC INTERMEDIATE )  
HOLDINGS INC., and STUDENT )  
RESOURCE CENTER HOLDINGS, LLC, )

Counterclaim Defendants, )

and )

M. AVI EPSTEIN, SHOSHANA VERNICK, )  
BRIAN SCHWARTZ, and JEFFREY KEITH, )

Third-Party Defendants. )

C.A. No. 22-790-RGA-JLH

**REPORT AND RECOMMENDATION**

Pending before the Court is Counterclaim Defendants and Third-Party Defendants' Motion to Dismiss Defendants' Amended Counterclaim/Third-Party Complaint (D.I. 78). I heard oral

argument on October 31, 2023. For the reasons announced from the bench at the conclusion of the hearing, I recommend that the motion be GRANTED-IN-PART and DENIED-IN-PART.

1. The Motion to Dismiss should be GRANTED as to Count II (gross negligence, willful misconduct and bad faith) and Count IV (reformation). Counts II and IV should be DISMISSED without prejudice.

2. The Motion to Dismiss should be DENIED as to Count III (declaratory judgment), Count V (breach of contract), and Count VI (breach of contract).

This Report and Recommendation is filed pursuant to 28 U.S.C. § 636(b)(1)(B), (C), Federal Rule of Civil Procedure 72(b)(1), and District of Delaware Local Rule 72.1. Any objections to the Report and Recommendation shall be filed within fourteen days and limited to ten pages. Any response shall be filed within fourteen days thereafter and limited to ten pages. The failure of a party to object to legal conclusions may result in the loss of the right to de novo review in the district court. The parties are directed to the Court's "Standing Order for Objections Filed Under Fed. R. Civ. P. 72," dated March 7, 2022, a copy of which can be found on the Court's website.

Dated: October 31, 2023

  
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Jennifer L. Hall  
UNITED STATES MAGISTRATE JUDGE