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SC Court of Appeals

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY

Court of Common Pleas

Honorable Perry H. Gravely, Circuit Court Judge
Order Entered October 14, 2025

Appellate Case No. 2025-002429

Lower Court Case No. 2022-CP-23-00240

DiscoverFresh Foods Inc., Respondent,

v.

Jesús Concepción, Kendry S. Tavarez a/k/a Kendry Solange Feliz, and National Risk Solutions, LLC., Defendants,
of which Jesús Concepción is the Appellant.

BRIEF OF APPELLANT JESÚS CONCEPCIÓN

Jesús Concepción, 524137-A5-38
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Pro se

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STATEMENT OF THE ISSUES

I. Whether the circuit court abused its discretion and committed an error of law by denying Rule 60(b) and Rule 55(c) relief after the record showed that Mr. Concepcion was an incarcerated civil defendant, served in federal custody, who repeatedly sought a stay before final default judgment, and whose motions were not heard until after final judgment was entered.

II. Whether the circuit court erred by treating Mr. Concepcion's incarceration and access-to-court limitations as ordinary neglect, while failing to meaningfully analyze South Carolina's special protections for incarcerated civil defendants under Rule 17(c), SCRCF, and the authorities recognizing that imprisonment physically restrains a litigant's ability to defend property rights.

III. Whether the circuit court erred by concluding that Mr. Concepcion waived Rule 17(c) protection where the record shows that he asked the court to stay the civil case, notified the court that he was incarcerated and unable to appear, and requested appointment of a guardian ad litem after his unaddressed efforts to participate were not adjudicated before final default judgment.

IV. Whether due process required relief from the final default judgment where Plaintiff obtained a multimillion-dollar default judgment after Mr. Concepcion filed stay motions and notices concerning a parallel criminal investigation and reservation of rights, yet Plaintiff's opposition memoranda did not substantively address the June 7, 2023 stay motion or the October 2023 Kevin O'Connor request that Mr. Concepcion's rights be reserved.

V. Whether the circuit court's order should be reversed because it relied on waiver, delay, and lack of excusable neglect without confronting the procedural irregularity created when multiple pro se motions filed before judgment were left unheard until after final judgment.

JURISDICTION AND STATUTORY BASIS

This Court has appellate jurisdiction under S.C. Code Ann. § 14-8-200(a) because this appeal is taken from an order or judgment of the Greenville County Court of Common Pleas, a circuit court. The order appealed from was entered on October 14, 2025 in Lower Court Case No. 2022-CP-23-00240, and the appeal is pending as Appellate Case No. 2025-002429.

The statutory and rule basis for review includes S.C. Code Ann. § 14-8-200(a), Rule 203(b)(1), SCACR, and the South Carolina Appellate Court Rules governing civil appeals from the Court of Common Pleas. The underlying issues arise from the circuit court's denial of relief sought under Rule 60(b), SCRCR, Rule 55(c), SCRCR, and Rule 17(c), SCRCR, including requests for stay, appointment of a guardian ad litem, and relief from default/default judgment.

STATEMENT OF THE CASE

This appeal arises from a civil action filed by DiscoverFresh Foods, Inc. in Greenville County, South Carolina. The action proceeded against Mr. Jesus Concepcion while he was incarcerated outside South Carolina in federal custody in New York. The case culminated in a final default judgment exceeding six million dollars.

The core issue is not whether default is a valid procedural device. It is whether, on this record, the circuit court could deny relief without applying the protective principles governing incarcerated civil litigants, without accounting for Mr. Concepcion's pre-judgment stay motions, and without correcting the prejudice caused by the court's failure to hear those motions before final judgment.

The record establishes several undisputed facts that materially distinguish this case from an ordinary default case. Mr. Concepcion was in custody when he was served. He was served by the Sheriff of the City of New York at MDC Brooklyn¹. Plaintiff later served him again at MDC Brooklyn with default-related papers. Mr. Concepcion filed handwritten and pro se motions asking for a stay. Those motions were filed before final default judgment. Yet no hearing was afforded on any of those motions until October 6, 2025, after final default judgment had already been entered.

The October 14, 2025 order itself confirms the procedural problem. It states that Mr. Concepcion filed: “1) a Motion to Stay on June 7, 2023, after default was entered but before the Default Judgment was entered; 2) a Second Motion to Stay on October 23, 2023; 3) a Third Motion to Stay and Vacate Default Judgment on February 11, 2025; 4) a Motion for Appointment of Guardian Ad Litem on April 1, 2025; and 5) a Motion to Set Aside Default and Dismiss the Complaint on August 27, 2025.” The order further states: “Because no hearing had been afforded to Mr. Concepcion on any of these Motions, the Court ordered on April 21, 2025, that an in-person hearing be scheduled to address all these issues.”

¹ “MDC Brooklyn” refers to the Metropolitan Detention Center in Brooklyn, New York.

That finding is decisive. It demonstrates that Mr. Concepcion had invoked the court's attention before final default judgment, but his motions were not adjudicated until after the judgment was entered and after his procedural position had become substantially worse. The issue on appeal is whether South Carolina law permits a court to deny relief by characterizing the incarcerated defendant as dilatory while the record simultaneously shows that he had filed motions and no hearing was afforded before the default judgment.

Plaintiff's opposition strategy confirms the same defect. Plaintiff's September 30, 2025 supplemental memorandum acknowledged that "on October 23, 2023, Defendant filed a pro se Motion to Stay Judgment," but argued that "[n]o hearing was requested and no order was entered on this motion." Plaintiff's memorandum also acknowledged that the February 11, 2025, April 1, 2025, and August 27, 2025 motions were pending. Yet Plaintiff did not substantively address the June 7, 2023 motion to stay due to the parallel criminal investigation or the October 2023 notice from Kevin O'Connor requesting that Mr. Concepcion's rights be reserved. Plaintiff instead framed the matter as a simple failure to respond.

The circuit court adopted that simplified framing. It denied all relief, finding that Mr. Concepcion had not shown grounds under Rule 60(b), had waived any guardian ad litem issue, and had access to the court because he filed multiple motions. But the court's reasoning turns Mr. Concepcion's efforts to protect himself into the basis for denying him protection. Filing motions from custody is not equivalent to a meaningful opportunity to defend a multimillion-dollar civil action, litigate discovery, respond to dispositive papers, address a parallel criminal investigation, protect Fifth Amendment concerns, or assert defenses and counterclaims.

South Carolina law requires more. Rule 17(c), SCRPC, states that “[a] person imprisoned outside this State shall appear by guardian ad litem in an action by or against him.” South Carolina cases recognize that the rationale for appointing a guardian for a prisoner “is not mental deficiency, but the physical restraint of imprisonment.” *Ex parte Foster*, 350 S.C. 238, 565 S.E.2d 290 (2002). Where an adverse judgment affects property rights, the court should ensure either appointment of a guardian ad litem or that the inmate is brought before the court before default judgment to determine whether appointment is essential to protect the prisoner's rights. *Gossett v. Gilliam*, 317 S.C. 82, 452 S.E.2d 6 (Ct. App. 1994).

This case involves a multimillion-dollar judgment affecting present and future property rights. Mr. Concepcion repeatedly notified the court that he was incarcerated, unable to appear, and seeking a stay. Relief was required.

STATEMENT OF FACTS

A. Service occurred while Mr. Concepcion was in federal custody.

Plaintiff's own service exhibits show that Mr. Concepcion was served in New York while incarcerated. The Sheriff's Certificate of Service dated March 10, 2022 states that Deputy Sheriff R. Garcia served Mr. Concepcion on March 9, 2022, "at approximately 11:25 AM at MDC 80 29th Street in the borough of Brooklyn, County of Kings," with the order, lis pendens, summons, verified complaint, and emergency motions. The certificate describes service by "PERSONAL DELIVERY" to "JESUS CONCEPCION personally."

A second Sheriff's Certificate of Service dated April 24, 2023 states that Deputy Sheriff D. Prophete served Mr. Concepcion "at 80 29th Street in the borough of Brooklyn, County of Kings" with default-related papers, including "Plaintiff's Motion for Default Judgment," "Affidavit of Damages," "Entry of Default," and related materials. Again, service occurred at MDC Brooklyn.

Those certificates are important not because Mr. Concepcion challenges physical receipt of the papers, but because they prove the central circumstance: he was an incarcerated civil defendant, outside South Carolina, facing a civil judgment while physically restrained by federal custody.

B. Mr. Concepcion filed pre-judgment motions requesting a stay.

The record includes a handwritten motion filed June 7, 2023 titled “Motion requesting a stay.” On the face of the filing, Mr. Concepcion asked the court to stay the civil action while he was confined and facing related criminal circumstances. The motion cover reflected the case number and was entered in the court file.

Mr. Concepcion filed a second motion to stay on October 23, 2023. The circuit court’s October 14, 2025 order expressly recognizes the October 23, 2023 motion as one of the motions that remained unheard until the court later scheduled an in-person hearing.

The December 21, 2023 letter likewise notified the court that

Mr. Concepcion was incarcerated and unable to appear. The letter is material because it shows continuing effort to communicate with the court rather than abandonment of the case.

C. The Kevin O'Connor correspondence requested that Mr. Concepcion's rights be reserved.

The record also contains an October 2023 letter from Kevin O'Connor. That letter is part of the appeal record because it supports Mr. Concepcion's position that counsel connected to his federal criminal matter placed the civil court and parties on notice that the civil case overlapped with concerns requiring reservation or protection of rights. The significance is not that the letter automatically stayed the case. The significance is that the circuit court and Plaintiff were on notice that Mr. Concepcion's ability to litigate the civil matter was constrained by criminal-defense concerns and incarceration. Plaintiff's July 15, 2025 opposition and September 30, 2025 supplemental opposition did not substantively analyze the June 7, 2023 stay motion or the O'Connor request to reserve rights. That omission matters because Plaintiff's principal theme was that Mr. Concepcion did nothing. The record shows otherwise.

D. Final default judgment was entered before the court afforded a hearing on Mr. Concepcion's pre-judgment motions.

The October 14, 2025 order confirms that final default judgment was entered on October 2, 2024. The same order confirms that Mr. Concepcion's June 7, 2023 and October 23, 2023 stay motions existed before final default

judgment and that “no hearing had been afforded to Mr. Concepcion on any of these Motions” until the court later ordered a hearing.

This chronology defeats the idea that the case is only about delay by Mr. Concepcion. He was not silent. He filed motions. The court did not hear them before final judgment. Plaintiff obtained judgment while those issues remained unresolved.

E. Plaintiff’s opposition memoranda relied on technical defects while avoiding the strongest equitable facts.

Plaintiff’s September 30, 2025 supplemental memorandum argued that Mr. Concepcion “failed to file a timely response,” that he “waited until October 23, 2023,” and that “[n]o hearing was requested and no order was entered on this motion.” Plaintiff further argued that Mr. Concepcion was “clearly intelligent and mentally competent,” had “access to the internet and U.S. postal mail,” and was not entitled to a guardian ad litem. Plaintiff argued that because he filed papers, the appointment of a guardian ad litem was unnecessary.

That framing is legally incomplete. Rule 17(c) protection for a prisoner is not based only on incompetency. South Carolina precedent explains that the prisoner rule is based on “the physical restraint of imprisonment.” Ex parte

Foster, 350 S.C. 238, 565 S.E.2d 290. A prisoner's ability to mail papers does not establish ability to litigate a civil case of this magnitude.

Likewise, neither opposition meaningfully addressed the October 2023 Kevin O'Connor request that Mr. Concepción's rights be reserved. That omission matters because the notice directly supports Mr. Concepción's argument that the civil case was entangled with criminal-defense concerns and that the court should have preserved the status quo instead of permitting final judgment to be entered while his participation was constrained.

Plaintiff's supplemental chronology is especially important because it omitted the June 7, 2023 Motion to Stay when it asserted that, "[o]n October 23, 2023, Defendant filed a pro se Motion to Stay Judgment. No hearing was requested and no order was entered on this motion." Resp't Supp. Mem., Sept. 30, 2025, p. 3, ¶10. That framing matters because the June 7, 2023 motion was filed months earlier, before final default judgment, and was later expressly recognized by the circuit court's October 14, 2025 order as one of the motions on which "no hearing had been afforded." Order, Oct. 14, 2025, p. 2.

F. The circuit court denied relief.

The circuit court held that Rule 60(b), rather than Rule 55(c), applied after judgment. The court reasoned that Mr. Concepcion’s incarceration, limited telephone access, lack of law library access, and reliance on purported counsel did not fit Rule 60(b). The court further found that he had waived appointment of a guardian ad litem by filing motions and failing to seek appointment until after judgment.

The order should be reversed because it treats the failure to adjudicate Mr. Concepcion’s pre-judgment motions as irrelevant, treats prison-based limitations as ordinary neglect, and treats pro se filing from custody as waiver of the protections that exist precisely because custody physically restrains a litigant.

Finally, the transcript confirms that the October 6, 2025 hearing did not fully cure the earlier deprivation. When Mr. Concepción attempted to address fraud-related issues, the court narrowed the proceeding, stating: “all I’m here for is to hear your motions to stay and set aside the default.” Tr. p.² 34, ll. 13-15. Thus, the record shows both the acknowledged pre-judgment

² “Tr.” refers to the October 6, 2025 hearing transcript.

omission and a limited post-judgment hearing, which together support reversal and remand.

The transcript further supports the access-to-court argument. Mr.

Concepción explained that he had limited access to phones, no ordinary internet access, and very limited ability to communicate with attorneys while housed in protective federal custody. Tr. p. 7, ll. 2-5. Those circumstances matter because mailing papers to the clerk is not the same thing as receiving a timely adjudication, monitoring the docket, appearing for hearings, or protecting property rights before judgment.

The transcript also rebuts Respondent’s anticipated framing that Mr.

Concepción simply ignored the case. Respondent’s counsel acknowledged in open court that Mr. Concepción’s prior counsel “literally went radio silent at the very beginning, and we proceeded with this case.” Tr. p. 30, ll. 4-5. Mr. Concepción explained the point from his side: “I was not running from this matter” and “was running towards it by hiring the attorney.” Tr. p. 31, ll. 3-5.

The transcript supplies the strongest factual support for reversal because the circuit court itself recognized the central procedural defect. The court stated: “I didn’t see in the file where those motions to stay had ever been

addressed,” and further stated, “I think before the judgment could be finalized, those motions should have been heard,” concluding that the failure was “just kind of an oversight.” Tr. p. 3, ll. 22-25; p. 4, l. 1.

G. The October 6, 2025 transcript confirms that the pre-judgment motions were overlooked and that Mr. Concepción was attempting to defend, not abandon, the case.

STANDARD OF REVIEW

An order denying relief under Rule 60(b), SCRPC, is reviewed for abuse of discretion. Whether the court applied the correct legal standard is a question of law. An abuse of discretion occurs when the order is controlled by an error of law or is based on factual conclusions without evidentiary support. *BB&T v. Taylor*, 369 S.C. 548, 633 S.E.2d 501 (2006).

The standard is deferential, but it is not toothless. South Carolina appellate courts reverse Rule 60(b) decisions where the circuit court’s analysis is legally incomplete, where the court fails to apply governing principles, or where the facts require equitable relief. *BB&T* reversed the denial of Rule 60(b)(4) relief where the judgment was entered without sufficient service and personal jurisdiction. *Tobias v. Rice*, 404 S.C. 1, 744 S.E.2d 705 (2013), set aside a judgment where the party was denied due process and notice

under circumstances involving attorney abandonment and procedural unfairness. *Ex parte Foster and Gossett* require special care when the defaulting party is an incarcerated civil defendant whose property rights are at stake.

Rule 55(c), SCRC³, provides that an entry of default may be set aside for good cause and a judgment by default may be set aside in accordance with Rule 60(b). When considering relief from default, South Carolina courts consider whether the moving party provides a satisfactory explanation, the timing of the motion, the existence of a meritorious defense, and prejudice. The appellate court reviews whether the trial court exercised discretion under the correct legal framework.

The strongest applicable review principle is this: discretion is abused when a court refuses relief by applying ordinary default rules while ignoring controlling circumstances that South Carolina law treats as extraordinary, including incarceration outside the state, unresolved pre-judgment motions, due-process limitations, and the failure to provide a hearing before final judgment.

³ “SCRC³” refers to the South Carolina Rules of Civil Procedure.

ISSUE PRESERVATION

Appellant preserved the issues because he raised the substance of each claim in written motions before the circuit court and the circuit court ruled on those grounds in the appealed order. The June 7, 2023 and October 23, 2023 motions preserved the stay, criminal-exposure, and need-for-protection issues; the February 11, 2025 motion preserved the request to stay and vacate; the April 1, 2025 motion preserved the Rule 17 guardian ad litem issue; the August 27, 2025 motion preserved the fraud and Rule 60(b)(3) issues; and the October 21, 2025 reconsideration motion preserved the argument that the court had failed to grapple with the overlooked pre-judgment motions and the record evidence supporting relief.

The issues were preserved. Mr. Concepcion repeatedly raised the same essential grounds in the circuit court before and after final default judgment: stay, inability to defend because of incarceration, parallel criminal proceedings, lack of meaningful ability to appear, appointment of a guardian ad litem, relief from default, and dismissal or set-aside due to procedural unfairness.

The circuit court's order expressly ruled on those issues. It addressed the motions to stay, the motions to vacate and set aside default judgment, the

motion to dismiss, and the motion for appointment of guardian ad litem. The order states that the court considered the pleadings, motions, briefs, exhibits, record, and arguments of the parties. The order then denied all relief.

Because the circuit court ruled on the issues raised, they are preserved for appellate review.

To the extent Respondent argues that any specific sub-argument was not preserved, preservation should not be applied mechanically against an incarcerated pro se litigant where the circuit court actually considered and ruled on the substance of the issue. The controlling issue is whether the trial court had an opportunity to rule on the subject matter. It did.

ARGUMENT

I. The circuit court abused its discretion because it failed to account for the dispositive chronology: Mr. Concepcion filed pre-judgment stay motions, but no hearing was afforded until after final default judgment.

The order contains the most important admission in the record: “Because no hearing had been afforded to Mr. Concepcion on any of these Motions, the Court ordered on April 21, 2025, that an in-person hearing be scheduled to address all these issues.” The court also recognized that the June 7, 2023 motion to stay was filed “after default was entered but before the Default Judgment was entered.”

That chronology required relief. A civil litigant in custody who files a pre-judgment stay motion should not lose all defenses and suffer a multimillion-dollar judgment while the motion remains unheard. The point is not that every stay motion must be granted. The point is that the motion had to be adjudicated before final judgment or, at minimum, the later Rule 60(b) analysis had to treat the failure to adjudicate as an extraordinary circumstance justifying relief.

The circuit court instead treated the existence of Mr. Concepcion's filings as proof that he had access to the court. That was error. Access to a mailbox is not access to a meaningful hearing. A motion that sits unresolved until after judgment does not protect a litigant's rights. A prisoner's repeated filings show diligence; they do not show waiver.

Plaintiff's supplemental opposition illustrates the problem. Plaintiff argued that "[n]o hearing was requested and no order was entered" on the October 23, 2023 motion. But that argument does not answer the June 7, 2023 stay motion and does not answer the court's responsibility to manage pending motions before entering final judgment. Plaintiff cannot transform the absence of a hearing into Mr. Concepcion's fault where he was incarcerated, pro se, and dependent on the court to set hearings.

The circuit court should have granted relief or, at minimum, vacated the final default judgment and restored the matter to the posture that existed when the pre-judgment stay motions should have been heard.

II. Rule 17(c) required a meaningful protection analysis because Mr. Concepcion was imprisoned outside South Carolina when the case proceeded against him.

Rule 17(c), SCRCF, states: “A person imprisoned outside this State shall appear by guardian ad litem in an action by or against him; but if imprisoned in this State, and not a minor or incompetent, the court may, in its discretion appoint a guardian ad litem or order him to be brought personally to the trial to testify in accordance with Rule 43(a).”

This rule exists because incarceration physically restrains a litigant. South Carolina Supreme Court authority confirms that the rationale for appointing a guardian for a prisoner “is not mental deficiency, but the physical restraint of imprisonment.” *Ex parte Foster*, 350 S.C. 238, 565 S.E.2d 290. *Gossett v. Gilliam* further explains that where an adverse judgment against a prisoner will affect present or future property rights, the court should ensure either that a guardian ad litem is appointed or that the inmate is brought before the court before default judgment to determine whether appointment is essential to protect the prisoner’s rights.

The judgment here plainly affects present and future property rights. It exceeds six million dollars. It creates execution, collection, and property consequences. This is exactly the kind of case where the “spirit of the law” requires protection before default judgment.

The circuit court relied on McCuen v. McCuen and waiver principles. But McCuen does not authorize denial of protection without a meaningful inquiry. McCuen recognizes that the right is not absolute and may be waived in appropriate circumstances. It does not hold that a prisoner waives Rule 17(c) merely by filing pro se papers from custody. Filing emergency motions while incarcerated shows an attempt to participate under restraint. It does not show an informed waiver of the right to a guardian ad litem or equivalent protection.

Nor does Plaintiff’s argument that Mr. Concepcion was “clearly intelligent and mentally competent” answer Rule 17(c). Competency is not the point. Foster says the point is physical restraint. Plaintiff’s focus on intelligence and mail access misstates the legal inquiry.

III. The denial of Rule 60(b) relief was controlled by errors of law.

The circuit court held that incarceration, limited law library access, limited telephone access, and reliance on purported counsel did not fall within Rule 60(b). That analysis is too narrow.

Rule 60(b) exists to allow relief from judgments where equity and justice require it. The rule includes mistake, inadvertence, surprise, excusable neglect, fraud or misconduct, void judgment, satisfaction, and “any other reason justifying relief.” The catch-all provision exists because extraordinary circumstances cannot always be reduced to a single formula.

Here, the extraordinary circumstance was cumulative: Mr. Concepcion was incarcerated outside South Carolina; he was served and litigating from custody; he filed pre-judgment stay motions; he alerted the court to his inability to appear; criminal-defense concerns overlapped with the civil claims; Plaintiff pursued default judgment while those issues were unresolved; and the court did not afford a hearing until after final judgment. That combination is more than ordinary neglect.

South Carolina precedent supports relief in analogous circumstances. *Tobias v. Rice* reversed and set aside a judgment where the litigant was placed in a procedural Catch-22 and denied due process. The Supreme Court explained

that if the party was represented, counsel had the duty to notify her, and if she was effectively pro se, she was entitled to due process and notice. The same fairness principle applies here. Plaintiff and the court cannot treat Mr. Concepcion as sufficiently pro se to bear all procedural burdens, while simultaneously ignoring that he was physically restrained, facing parallel criminal exposure, and seeking assistance from the court.

BB&T v. Taylor confirms that Rule 60(b) denial is reversible when the court's judgment rests on a jurisdictional or due-process defect. Although Mr. Concepcion does not rely solely on defective service, BB&T is important because it confirms that default judgments are not immune from appellate correction when foundational fairness is missing.

IV. Plaintiff's opposition memoranda did not answer the strongest facts and should not have been adopted.

Plaintiff's September 30, 2025 supplemental memorandum repeatedly emphasized what Mr. Concepcion did not do. But it did not meaningfully confront what he did do.

Plaintiff argued that Mr. Concepcion "waited until October 23, 2023" to file a pro se motion. That statement omits the June 7, 2023 motion to stay, which the circuit court later recognized. Plaintiff argued that no hearing was

requested on the October 23 motion. That does not answer the prior June 7 stay request or the fact that an incarcerated pro se defendant cannot personally place himself on the Greenville County hearing roster from federal custody in New York. Plaintiff argued that Mr. Concepcion's filings show competence and access. That does not answer Foster, Gossett, or Rule 17(c), which are concerned with physical restraint, not mental incapacity. Plaintiff also did not substantively address the Kevin O'Connor October 2023 request that Mr. Concepcion's rights be reserved. That request matters because it undermines Plaintiff's suggestion that the civil case was simply ignored. It shows that the civil action intersected with criminal-defense concerns and that Mr. Concepcion's ability to litigate normally was compromised.

Plaintiff's prejudice argument is also overstated. Plaintiff claims prejudice because the case is old and litigation expenses were incurred. But prejudice from delay is not the same as prejudice from having to litigate on the merits. Plaintiff was on notice long before final judgment that Mr. Concepcion sought a stay and disputed his ability to defend. Plaintiff proceeded at its own risk while those motions were unresolved.

V. Mr. Concepcion presented at least colorable meritorious defenses and claims requiring merits review.

The circuit court did not meaningfully analyze whether Mr. Concepcion had colorable defenses because it disposed of the case through default and waiver. But the record reflects that Mr. Concepcion sought to challenge Plaintiff's factual allegations, alleged fraud and misconduct, disputed damages, and sought an opportunity to assert defenses and counterclaims. For default-relief purposes, a litigant need not prove the defense at the Rule 60(b) stage. The question is whether the proffered defense, if believed, could affect the result. In a multimillion-dollar case involving allegations of fraud, fiduciary duty, conversion, damages, third-party conduct, and a parallel criminal investigation, the defense threshold should not be applied so rigidly that an incarcerated litigant is denied any chance to test damages or liability. Plaintiff's own supplemental memorandum shows that discovery and depositions occurred after default. It argued that Mr. Concepcion alleged perjury during a July 29, 2024 deposition, destruction of evidence, and intrinsic and extrinsic fraud. Plaintiff dismissed those issues as insufficient, but they are precisely the kinds of allegations that require an adversarial process rather than a one-sided default judgment.

The court should have vacated the final judgment, allowed appointment of a guardian ad litem or other protective procedure, and permitted a structured merits review.

VI. Respondent's anticipated arguments fail.

Respondent will likely argue that Mr. Concepcion admitted service. But this appeal is not primarily about physical service. It is about what happened after service to an incarcerated defendant: unresolved stay motions, Rule 17(c) protection, and lack of a meaningful opportunity to defend before judgment.

Respondent will likely argue that Mr. Concepcion waited too long. The record refutes that characterization because the June 7, 2023 and October 23, 2023 motions were filed before final judgment. Delay cannot be charged entirely to Mr. Concepcion when the court itself later acknowledged that no hearing had been afforded on any of the motions.

Respondent will likely argue waiver. But waiver requires an intentional relinquishment of a known right. An incarcerated pro se defendant's attempt to file motions cannot be treated as an intentional waiver of Rule 17(c) protection. If anything, those filings showed that he was asking the court for help because he could not defend normally.

Respondent will likely argue competence. But the prisoner guardian rule is not limited to incompetence. Foster expressly rejects that framing by explaining that the rationale is physical restraint.

Respondent will likely argue prejudice. But the law favors resolution on the merits, especially where a multimillion-dollar judgment was entered while unresolved pre-judgment motions were pending. Any prejudice can be managed by conditions, schedules, limited discovery, bond requirements where appropriate, or other equitable tools. It does not justify leaving an arguably defective default judgment intact.

CONCLUSION

This case should not stand as an ordinary default. The record shows an incarcerated defendant, served in federal custody outside South Carolina, who filed pre-judgment stay motions, notified the court of his inability to appear, faced overlapping criminal-defense concerns, and was not afforded a hearing until after final default judgment. Plaintiff's opposition memoranda did not meaningfully address the June 7, 2023 stay motion or the Kevin O'Connor request that Mr. Concepcion's rights be reserved. The circuit court's order acknowledged that no hearing had been afforded on the

motions, yet denied relief by treating Mr. Concepcion's prison filings as proof of waiver and access.

South Carolina law does not require that result. Rule 17(c), Rule 60(b), due process, and the authorities governing incarcerated civil defendants require a more careful remedy. At minimum, the final default judgment should be vacated and the case remanded for appointment of a guardian ad litem or other protective procedure, a merits-based determination of defenses, and a fair opportunity to litigate before any final judgment is entered.

For these reasons, Appellant Jesus Concepcion respectfully asks this Court to reverse the October 14, 2025 order, vacate the final default judgment, remand with instructions to provide Rule 17(c) protection or an equivalent protective hearing, and grant such further relief as this Court deems just and proper.

Respectfully submitted,

/s/ Jesús Concepción

Jesús Concepción

Appellant, Pro Se

Date: May 01, 2026

CERTIFICATE OF COMPLIANCE

I certify that this Brief of Appellant complies with Rule 211(b), SCACR. The Brief is signed and is intended to comply with the content, formatting, and length requirements applicable to briefs under the South Carolina Appellate Court Rules, including Rule 208 and Rule 267, SCACR.

Date: May 01, 2026

/s/ Jesús Concepción

Jesús Concepción

Appellant, Pro Se

**DESIGNATION OF MATTER TO BE INCLUDED IN THE RECORD ON
APPEAL AND APPENDIX INDEX**

Pursuant to Rules 208 and 209, SCACR⁴, Appellant designates the following concise record materials as necessary to decide the issues on appeal. The appendix should include only those documents needed to show service, custody, the overlooked pre-judgment motions, the parties' competing positions, the circuit court's rulings, and preservation.

Appendix A-1: Sheriff's Certificate of Service, March 10, 2022.

Appendix A-2: Sheriff's Certificate of Service, April 24, 2023.

Appendix A-3: Motion to Stay, filed June 7, 2023.

Appendix A-4: Motion to Stay, filed October 23, 2023.

Appendix A-5: Kevin O'Connor letter/request to reserve Mr. Concepción's rights, dated October 23, 2023.

Appendix A-6: Mr. Concepción's December 21, 2023 letter advising inability to appear and intent to participate.

Appendix A-7: Emergency Motion to Stay and Vacate Default Judgment, filed February 11, 2025.

Appendix A-8: Motion for Appointment of Guardian Ad Litem and

⁴ "SCACR" refers to the South Carolina Appellate Court Rules.

Renewed Motion to Stay, filed April 1, 2025.

Appendix A-9: April 21, 2025 notice/order scheduling hearing.

Appendix A-10: Plaintiff's Memorandum in Opposition, July 15, 2025.

Appendix A-11: Motion to Set Aside Judgment and Dismiss, filed August 27, 2025.

Appendix A-12: Plaintiff's Supplemental Memorandum in Opposition, filed September 30, 2025.

Appendix A-13: October 6, 2025 hearing transcript, cited pages and lines.

Appendix A-14: Order denying relief, entered October 14, 2025.

Appendix A-15: Motion for Reconsideration, filed October 21, 2025.

Appendix A-16: Order denying reconsideration, entered October 30, 2025, if separately available in the lower-court record.

This designation is intentionally shorter than the full lower-court file and is limited to the filings and transcript portions necessary for the appellate issues raised in this brief.

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May 04 2026

SC Court of Appeals

CERTIFICATE OF SERVICE

I certify that on May 01, 2026, I served a copy of this Brief of Appellant, including the Designation of Matter to be Included in the Record on Appeal and Appendix Index, on counsel of record for Respondent, Sarah Timmons, Esquire, and all parties of record by depositing the same in the United States Mail, first-class postage prepaid, and/or by any method permitted by the South Carolina Appellate Court Rules.

Date: May 01, 2026

/s/ Jesús Concepción

Jesús Concepción

Appellant, Pro Se

Spartanburg County Detention Center

950 California Avenue

Spartanburg, South Carolina 29303

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May 04 2026

SC Court of Appeals

SOUTH CAROLINA COURT OF APPEALS

JENNY ABBOTT KITCHINGS, CLERK

POST OFFICE BOX 11629

COLUMBIA, SOUTH CAROLINA 29211

DiscoverFresh Foods, Inc., Respondent,

v.

Jesús Concepción, Kendry S. Tavaréz a/k/a Kendry Solange Feliz, and National Risk Solutions, LLC, Defendants,

of which Jesús Concepción is the Appellant.

Appellate Case No.: 2025-002426

Trial Court Case No.: 2022-CP-23-00240

RE: Cover Letter — Appellant's Initial Brief

May 1, 2026

To the Honorable Jenny Abbott Kitchings, Clerk of Court:

Enclosed please find the Appellant's Initial Brief submitted on behalf of Jesús Concepción in the above-referenced appeal.

Mr. Concepción respectfully extends his appreciation to the Office of the Clerk of Court, the Honorable South Carolina Court of Appeals, and the Spartanburg County Detention Center for the access, guidance, and accommodations that have allowed him, while detained, to participate in and pursue appellate review in this matter.

The Office of the Clerk of Court accepted the Appellant's detention-facility calls, mailed important information, and timely responded to inquiries that assisted him in navigating the technical requirements of the appellate process. These efforts helped reduce the obstacles faced by a litigant who is restrained by incarceration and attempting to exercise his right of access to the courts.

The Appellant does not represent that his brief is perfect. Rather, he respectfully submits that preparing an appellate brief while detained required substantial effort, restraint, and diligence, including the challenge of presenting legal arguments in a professional manner, avoiding accusatory language, and identifying potentially colorable claims without formal legal training. Determining which facts were necessary to support those claims was an especially burdensome task.

Nevertheless, this submission stands as evidence that when a court and a detention facility have realistic procedures and access provisions in place, even a difficult and complicated appellate task may be accomplished.

Respectfully submitted,

Jesús Concepción

Detention No.: 524137-A5-38

/s/ Jesús Concepción

Jesús Concepción, Appellant

Spartanburg County Detention Center

950 California Avenue

Spartanburg, South Carolina 29303

cc: Sarah Timmons