RECEIVED
May 04 2026
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. Jesus Concepcion, et al., Defendants, of which Jesus Concepcion is the Appellant

DESIGNATION OF MATTER AND APPENDIX PACKAGE

Respectfully submitted, April 30, 2026

/s/ Jesus Concepcion
Jesus Concepcion, 524137-A5-38
Spartanburg County Detention Center
950 California Avenue, Spartanburg, South Carolina 29303

DESIGNATION OF MATTER

Appellant designates the following matter for inclusion in the appendix in support of the appeal. The listed documents are organized as Appendix A-1 through Appendix A-16 and are stamped accordingly on the associated documents.

Appendix No.	Designated Matter
A-1	Sheriff's Certificate of Service, March 10, 2022
A-2	Sheriff's Certificate of Service, April 24, 2023
A-3	Motion to Stay, filed June 7, 2023
A-4	Motion to Stay, filed October 23, 2023
A-5	Kevin O'Connor letter/request, filed October 23, 2023
A-6	Letter advising inability to appear and intent to participate, filed December 21, 2023
A-7	Emergency Motion to Stay and Vacate Default Judgment, filed February 11, 2025
A-8	Motion for Appointment of Guardian ad Litem and Renewed Motion to Stay, filed April 1, 2025
A-9	Order/Form 4 directing hearing on Mr. Concepcion's Motion to Stay, filed April 21, 2025
A-10	Plaintiff's Response in Opposition, filed July 15, 2025
A-11	Motion to Set Aside Default Judgment, Final Judgment, and Dismiss Plaintiff's Claim with Prejudice, filed August 27, 2025
A-12	Plaintiff's Supplemental Memorandum in Opposition, filed September 30, 2025
A-13	October 6, 2025 hearing transcript
A-14	Order denying relief, entered October 14, 2025
A-15	Motion for Reconsideration, filed October 21, 2025
A-16	Order denying reconsideration, entered October 30, 2025

APPENDIX LIST

The appendix is assembled in the following order. Each included document has the corresponding appendix label superimposed on the document pages.

No.	Document
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, filed October 23, 2023
APPENDIX A-6	Letter advising inability to appear and intent to participate, filed December 21, 2023
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 Renewed Motion to Stay, filed April 1, 2025
APPENDIX A-9	Order/Form 4 directing hearing on Mr. Concepcion's Motion to Stay, filed April 21, 2025
APPENDIX A-10	Plaintiff's Response in Opposition, filed July 15, 2025
APPENDIX A-11	Motion to Set Aside Default Judgment, Final Judgment, and Dismiss Plaintiff's Claim with Prejudice, 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
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

APPENDIX A-1

Sheriff's Certificate of Service, March 10, 2022

Document label superimposed on following pages

EXHIBIT B

SHERIFF'S CERTIFICATE OF SERVICE

PERSONAL DELIVERY

ELECTRONICALLY FILED - 2022 Mar 29 2:34 PM - GREENVILLE - COMMON PLEAS - CASE#2022CP230240
ELECTRONICALLY FILED - 2025 Jul 15 6:36 PM - GREENVILLE - COMMON PLEAS - CASE#2022CP230240

Civil Action # 2022-CP-23-00240

COURT OF COMMON PLEAS,
STATE OF SOUTH CAROLINA
GREENVILLE COUNTY

Sheriff's Case # 22005858

----------x

DISCOVERFRESH FOODS INC,

PLAINTIFF/PETITIONER,

VS

JESUS CONCEPCION,

DEFENDANT/RESPONDENT.

----------x

STATE OF NEW YORK }
KINGS COUNTY } SS:

I, **R. GARCIA**, Deputy Sheriff of the City and State of New York, authorized pursuant to my special duties to serve process, hereby certify that: I am not a party to this action or proceeding and over 18 years of age. I further certify that on **3/9/2022**, at approximately **11:25 AM** at **MDC 80 29TH STREET** in the borough of **BROOKLYN,** County of KINGS, I served the annexed: **ORDER, LIS PENDENS, SUMMONS, VERIFIED COMPLAINT, PLAINTIFF'S MOTION FOR TEMPORARY RESTRAING ORDER & PREJUDGMENT ATTACHMENT AND PLAINTIFF'S MOTION FOR TEMPORARY INJUNCTION PREJUDGMENT ATTACHMENT & EMERGENCY HEARING** upon **JESUS CONCEPCION**, in the following manner:

[X] PERSONAL DELIVERY

By delivering to and leaving with **JESUS CONCEPCION** personally a true copy thereof, said person being known as the mentioned and described herein.

[X] DESCRIPTION:

Skin Complexion: **LIGHT,** Gender: **Male,** Approx. Age: **50** years old,

Height: **5'8",** Weight: **190** lbs, Hair Color: **WHITE.**

I understand that false statements made herein are punishable as a class A misdemeanor pursuant to Penal Law §210.45.

Dated: 3/10/2022

SHERIFF OF THE CITY OF NEW YORK
JOSEPH FUCITO

BY: _____

R. GARCIA
DEPUTY SHERIFF
SHIELD # 476

APPENDIX A-2

Sheriff's Certificate of Service, April 24, 2023

Document label superimposed on following pages

ELECTRONICALLY FILED - 2025 Apr 23 12:47 PM - GREENVILLE - COMMON PLEAS - CASE#2022CP2300240
ELECTRONICALLY FILED - 2025 Jul 15 6:36 PM - GREENVILLE - COMMON PLEAS - CASE#2022CP2300240

SHERIFF'S CERTIFICATE OF SERVICE

PERSONAL DELIVERY

Docket # 2022-CP-23-00240

Sheriff's Case # 23009126

COURT OF COMMON PLEAS
STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

----------x

DISCOVERFRESH FOODS, INC.,,

PLAINTIFF,

VS

JESUS CONCEPCION, ET AL,

DEFENDANT.

----------x

STATE OF NEW YORK }
KINGS COUNTY } SS:

I, **D. PROPHETE**, Deputy Sheriff of the City and State of New York, authorized pursuant to my special duties to serve process, hereby certify that: I am not a party to this action or proceeding and over 18 years of age. I further certify that on **4/24/2023**, at approximately **9:53 AM** at **80 29TH STREET** in the borough of **BROOKLYN,** County of KINGS, I served the annexed: **PLAINTIFF'S MOTION FOR DEFAULT JUDGMENT, AFFIDAVIT OF DAMAGES, AMENDED AFFIDAVIT OF DAMAGES, ENTRY OF DEFAULT AGAINST DEFENDANTS TAVAREZ AND NRS, ENTRY OF DEFAULT AGAINST DEFEDANT CONCEPTION, PLAINTIFF'S MOTION FOR ENTRY OF DEFAULT AGAINST DEFENDANTS, PLAINTIFF'S MOTION FOR ENTUR OF DEFAULT AGAINST DEFENDANT CONCEPCION, PLAINTIFF'S ADDIFAVIT IN SUPPORT OF ENTRY OF DEFAULT AGAIN DEFENDANT CONCEPCION** upon **JESUS CONCEPCION**, in the following manner:

[X] PERSONAL DELIVERY

By delivering to and leaving with **JESUS CONCEPCION** personally a true copy thereof, said person being known as the mentioned and described herein.

[X] DESCRIPTION:

Skin Complexion: **MEDIUM,**	Gender: **MALE,**	Approx. Age: **49** years old,
Height: **5'11",**	Weight: **240** lbs,	Hair Color: **SALT AND PEPPER**.

I understand that false statements made herein are punishable as a class A misdemeanor pursuant to Penal Law §210.45.

Dated: 4/24/2023

SHERIFF OF THE CITY OF NEW YORK
ANTHONY MIRANDA

BY: _____

D. PROPHETE
DEPUTY SHERIFF
SHIELD # 458

APPENDIX A-3

Motion to Stay, filed June 7, 2023

Document label superimposed on following pages

STATE OF SOUTH CAROLINA,)
)
COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS

CASE NO.: 2022CP2300240

2023 JUN 7 PM 12:05
GREENVILLE COUNTY SC
Clerk of Court

Discover Fresh Foods

Plaintiff(s),

vs.

Jesus Concepcion

Defendant(s).

Motion requesting a stay

See Attached

ENTERED COMPUTER

Kendy Tavarez
06/07/23

Attention: Greenville County Clerk of Court

From: Jesus Concepcion, Kendry Tavarez, National Risk Solutions Inc., LLC/Defendants

Regarding: 2022CP2300240

Attached please find my Motion requesting a Stay in regards to the Default and the above captioned matter due to the following reasons:

-Current Criminal Investigation being conducted on this matter in Greenville South Carolina

-Jesus Concepcion has been detained in MDC Brooklyn since August of 2021 and can not be present for a defense

-Cannot afford legal representation on this matter and I would like to present evidence and present a counter claim.

Yours in Service,
Jesus Concepcion

TRULINCS 58984509 - CONCEPCION, JESUS - Unit: BRO-K-B

FROM: 58984509
TO: Tavarez, Kendry
SUBJECT: Greenville County Clerk
DATE: 05/04/2023 12:17:23 PM

April 27, 2023

Greenville County Clerk of Court
305 E. North St., Suite 202
Greenville, SC 29601

VIA USPA

RE: Lift OF Default and grant a STAY - DiscoverFresh Foods, Inc. v Jesus Concepcion, Kendry S. Tavarez, a.k.a Kendry Solange Feliz, National Risk Solutions, LLC, and Jeffrey L. Mahon - Civil Action No. 2022-CP-23-00240

Dear Honorable Judge,

I am respectfully requesting for a Lift of the Default Judgment filed on February 9, 2023 and grant a STAY on the above mentioned Civil Action and request the court for help on getting legal representation. We would like to challenge this Civil complaint, submit a counter claim and present our evidence.

Procedural History:

On March 9th, 2022 I was served with the Civil Action. On April 12, 2023 via USPA I received the Default notice from the plaintiff's attorney. The week of April 16th, 2023 I was served with a package of documents including the Default order and a Certificate OF Service from the plaintiff's attorney stating that on 10-19-2022 they electronically filed a PLANTIFF'S MOTION FOR ENTRY OF DEFUALT. The PLIANTIFF'S AFFIDAVIT IN SUPPORT OF PLAINTIFF'S MOTION FOR ENTRY OF DEFAULT states on line 7 that my response was due on April 8th, 2022.

I have been detained since August 8, 2021. I have been at the MDC Brooklyn Detention Center since early September of 2021. Because of the lockdowns due to COVID protocols, shortage of staff and safety issues in the facility, I had limited phone and email access. If the court googles MDC Brooklyn the court will get a better picture of the conditions in this institution. On or about March 16, 2022 I was able to reach a friend who practices immigration law in South Carolina. He was able to recommend Mr. John Mussetto. On March 17, 2022 my wife signed a retainer agreement with Mr. Mussetto for limited representation, she paid $5,000 to respond to the Civil Action and request for a STAY. With no luck on many occasions my wife and I tired to reach Mr. Mussetto to request a copy and answer from the court to the Motion. I reached out to my friend who recommended Mr. Mussetto and he told us on multiple occasions Mr. Mussetto would email us his response to us. On April 28, 2023 I was finally able to reach Mr. Mussetto through my friend on a three way call. On this day Mr. Mussetto expressed he decided not to formerly respond to the motion due to the short notice when he was retained. Mr. Missetto stated he reached out directly to the plaintiff's attorney Sarah Timmons and unfortunately the plaintiff did not want to accommodate his request. This is the first of us hearing Mr. Mussetto never formally responded to the court on the Motion. I found out I was in DEFAULT when I received the notice on April 12, 2023. I understand that Mr. Mussetto stipulated in his retainer no guarantees on getting us the STAY. I would have at least expected a response from him notifying my wife and I the results of his efforts, and inform us we will be getting a DEFUALT JUDGEMENT.

Conclusion:

I would like to respectfully ask the court to consider my request to LIFT THE DEFAULT and grant a STAY due to the following reasons:
Current Criminal Investigation on this matter in Greenville SC
My inability to defend myself due to my detention
Inability to afford representation to defend my wife and myself on this matter

Respectfully,
Jesus Concepcion

STATE OF SOUTH CAROLINA)
COUNTY OF Greenville)

IN THE COURT OF COMMON PLEAS
13 JUDICIAL CIRCUIT

CASE NO.: 2022 -CP- 23 - 00240

Discover Fresh Foods, Inc.; Plaintiff,
vs.
Jesus Concepcion Kendry S. Tavarez
National Risk Solutions, LLC Defendant.

MOTION AND ORDER INFORMATION FORM AND COVERSHEET

Plaintiff's Attorney:	Defendant's Attorney:
Sarah Timmons, Bar No. 100007	Jesus Concepcion, Bar No
Address: 25 Delane Drive, Suite E	Address: MDC Brooklyn, 80 29th St. Brooklyn NY 11232
Phone: 864-906-0289 Fax	Phone: Fax
E-mail: Other:	E-mail: Other:

☐ **MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)**
☑ **FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)**
☐ **PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)**

SECTION I: Hearing Information

Nature of Motion:
Estimated Time Needed: Court Reporter Needed: ☐ YES/☐ NO

SECTION II: Motion/Order Type

☑ Written motion attached
☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Jesus Concepcion — 5/30, 2023
Signature of Attorney for ☐ Plaintiff / ☑ Defendant — Date submitted

SECTION III: Motion Fee

☑ PAID – AMOUNT: $ 25.00
☐ EXEMPT: (check reason)
- ☐ Rule to Show Cause in Child or Spousal Support
- ☐ Domestic Abuse or Abuse and Neglect
- ☐ Indigent Status ☐ State Agency v. Indigent Party
- ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
- ☐ Motion for Stay in Bankruptcy
- ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
- ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions
  Name of Court Reporter:
- ☐ Other:

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.
☐ Other:

JUDGE CODE
Date: , 20

CLERK'S VERIFICATION

Collected by: Sm Date Filed: 6/7/2023, 20

☑ MOTION FEE COLLECTED: $ 25
☐ CONTESTED – AMOUNT DUE: $

SCCA 233 (11/2003)

APPENDIX A-4

Motion to Stay, filed October 23, 2023

Document label superimposed on following pages

2022CP2300240

PRO-SE WRITTEN MOTION

'23 OCT 23 PM3:19
Brie Garrett COC GVL SC

Your Honor,

I was recently indicted in 6:23-cr-00818-DCC, USA v. Concepcion et al, in the South Carolina District Court.

1. I believe that this civil case at-hand should be stayed pending disposition of the underlying pending criminal prosecution, as the issues discussed in both are identical.

2. My responsive pleadings in this action could interfere with my constitutional rights as they relate to my criminal prosecution.

3. Additionally, I believe that this civil case at-hand should be stayed because I have not received a complete set of pleadings associated with the case, and I am not able to defend my interests if I do not even know what pleadings have been filed against me.

4. I am being punished, sanctioned, or penalized, for things that I have been unable to respond to due to lack of knowledge of the documents due to inadequate service of process.

5. I can not access the South Carolina Docket online, because I am incarcerated.

6. The only way that I am aware of what is going on in this case is by the pleadings I receive via US Mail.

7. If I do not receive the pleading, I do not know what is going on.

8. I can not respond to something that I do not know is going on.

9. I should not be penalized for not responding to something I have no idea is happening.

10. I ask that you Order all Counsel on this matter to re-serve me with the pleadings that should have been served already.

Thank you for your time.

O'CONNOR LAW FIRM, LLP
2100 SOUTHBRIDGE PARKWAY, SUITE 650
BIRMINGHAM, ALABAMA 35209
516-504-8398

SENT TO COUNSEL
BY MY ATTORNEY IN UNRELATED MATTER

October 19, 2023

CONFIDENTIAL AND PRIVILEGED

Re: 2022CP2300240

To Whom It May Concern,

My name is Kevin O'Connor, and I am a Partner at the O'Connor Law Firm, based out of Birmingham Alabama. I currently provide pro-bono legal services for Jesus Concepcion, an inmate detained in federal custody, pursuant to 22 NYCRR § 522.8, in matters unrelated to the above-referenced action.

It has been brought to my attention that Mr. Concepcion is a Defendant in a civil action pending in your jurisdiction. As per Mr. Concepcion, he has not received a complete set of documents associated with this case. Documents that should have been served upon Mr. Concepcion were *allegedly* not served. Mr. Concepcion is not able to access the public docket, due to his status as an incarcerated Defendant. Mr. Concepcion is not able to follow along with the case, nonetheless, protect his interests, due to not having access to the necessary Court documents.

Mr. Concepcion requests that Plaintiff's Counsel serve him a complete set of pleadings and other documents associated with the above-referenced action. Further, Mr. Concepcion would like a 90 day stay on all proceedings so that he can review the record in its entirety, and potentially seek the assistance of local counsel.

Mr. Concepcion has authorized me to receive a complete set of pleadings and other related documents on his behalf and said documents can be mailed to: Box 86, East Meadow, NY 11554. Upon receipt, I will personally deliver the documents to MDC Brooklyn. Please keep in mind that MDC requires all legal mail to be screened, and recently said screening has averaged 5-7 business days.

I will not be representing Mr. Concepcion in this matter, as I am not barred in South Carolina. Mr. Concepcion's position is that, as South Carolina Attorney's and Officer's of the Court, each of you have a duty to notify the Court of Mr. Concepcion's assertion that he not received proper service of process throughout the course of this litigation, and thus any and all injunctions and judgements, if any, entered against Mr. Concepcion by means of default, must be immediately vacated due to his lack of service.

O'CONNOR LAW FIRM, LLP
2100 SOUTHBRIDGE PARKWAY, SUITE 650
BIRMINGHAM, ALABAMA 35209
516-504-8398

Upon information and belief, Mr. Concepcion is willing to sign an affidavit stating same. A copy of this letter will be provided to the Court by Mr. Concepcion.

Best,

Kevin O'Connor

STATE OF SOUTH CAROLINA)
COUNTY OF ____)

DISCOVER FRESH FOOD)
Plaintiff,)
vs.)
JESUS CONCEPCION)
Defendant.)

IN THE COURT OF COMMON PLEAS
13 JUDICIAL CIRCUIT

CASE NO.: 2023-CP-230-0210

MOTION AND ORDER INFORMATION FORM AND COVERSHEET

23 OCT 23 PM 3:19
Brice Garrett COC GVL SC

Plaintiff's Attorney: ____, Bar No. ____ Address: ____ Phone: ____ Fax ____ E-mail: ____ Other: ____	JESUS CONCEPCION PRO SE 58984-509 MDC BROOKLYN	Defendant's Attorney: ____, Bar No. ____ Address: ____ Phone: ____ Fax ____ E-mail: ____ Other: ____

=> ☒ ~~MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)~~
☒ **FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)**
☐ **PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)**

~~SECTION I: Hearing Information~~

Nature of Motion: STAY
Estimated Time Needed: 1 HOUR Court Reporter Needed: ☐ YES/☑ ~~NO~~

SECTION II: Motion/Order Type

☑ Written motion attached
☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

PRO SE ~~PLA~~ DEFENDANT JESUS CONCEPCION
Signature of Attorney for ☐ Plaintiff / ☐ Defendant

10/19/23
Date submitted

SECTION III: Motion Fee

☐ PAID – AMOUNT: $ 25
☐ EXEMPT: (check reason)
☐ Rule to Show Cause in Child or Spousal Support
☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter: ____
☐ Other: ____

JUDGE'S SECTION ☐ Motion Fee to be paid upon filing of the attached order. ☐ Other:	JUDGE CODE ____ Date: ____

CLERK'S VERIFICATION

Collected by: LM Date Filed: 10/23/23
☑ MOTION FEE COLLECTED: $ 25 money order
☐ CONTESTED – AMOUNT DUE: $ ____

SCCA 233 (11/2003)

APPENDIX A-5

Kevin O'Connor letter/request, filed October 23, 2023

Document label superimposed on following pages

O'CONNOR LAW FIRM, LLP
2100 SOUTHBRIDGE PARKWAY, SUITE 650
BIRMINGHAM, ALABAMA 35209
516-504-8398

'23 OCT 23 PM3:19
Brice Garrett COC GVL SC

October 19, 2023

CONFIDENTIAL AND PRIVILEGED

Re: 2022CP2300240

To Whom It May Concern,

My name is Kevin O'Connor, and I am a Partner at the O'Connor Law Firm, based out of Birmingham Alabama. I currently provide pro-bono legal services for Jesus Concepcion, an inmate detained in federal custody, pursuant to 22 NYCRR § 522.8, in matters unrelated to the above-referenced action.

It has been brought to my attention that Mr. Concepcion is a Defendant in a civil action pending in your jurisdiction. As per Mr. Concepcion, he has not received a complete set of documents associated with this case. Documents that should have been served upon Mr. Concepcion were *allegedly* not served. Mr. Concepcion is not able to access the public docket, due to his status as an incarcerated Defendant. Mr. Concepcion is not able to follow along with the case, nonetheless, protect his interests, due to not having access to the necessary Court documents.

Mr. Concepcion requests that Plaintiff's Counsel serve him a complete set of pleadings and other documents associated with the above-referenced action. Further, Mr. Concepcion would like a 90 day stay on all proceedings so that he can review the record in its entirety, and potentially seek the assistance of local counsel.

Mr. Concepcion has authorized me to receive a complete set of pleadings and other related documents on his behalf and said documents can be mailed to: Box 86, East Meadow, NY 11554. Upon receipt, I will personally deliver the documents to MDC Brooklyn. Please keep in mind that MDC requires all legal mail to be screened, and recently said screening has averaged 5-7 business days.

I will not be representing Mr. Concepcion in this matter, as I am not barred in South Carolina. Mr. Concepcion's position is that, as South Carolina Attorney's and Officer's of the Court, each of you have a duty to notify the Court of Mr. Concepcion's assertion that he not received proper service of process throughout the course of this litigation, and thus any and all injunctions and judgements, if any, entered against Mr. Concepcion by means of default, must be immediately vacated due to his lack of service.

O'CONNOR LAW FIRM, LLP
2100 SOUTHBRIDGE PARKWAY, SUITE 650
BIRMINGHAM, ALABAMA 35209
516-504-8398

Upon information and belief, Mr. Concepcion is willing to sign an affidavit stating same. A copy of this letter will be provided to the Court by Mr. Concepcion.

Best,

Kevin O'Connor

APPENDIX A-6

Letter advising inability to appear and intent to participate, filed December 21, 2023

Document label superimposed on following pages

LETTER NOTIFING THE COURT I CAN NOT APPEAR ON THE ABOVE REFFERANCED ACTION AND I WOULD LIKE TO DEFEND MY INTEREST

To Whom it Concerns,

1. My name is Jesus Concepcion, and I am the Pro-Se Defendant in the above-referenced action.

2. I am incarcerated at the Federal Metropolitan Detention Center in Brooklyn, New York since August of 2021.

3. On October 25, 2022, this Court entered default due to my failure to respond, plead, or defend.

4. After I was notified of the default judgment I wrote a letter to the Court explaining my circumstances in getting legal representation and unbeknownst to me, the Attorney we hired took our money and never "appeared" or responded in this action.

5. On October 23, 2023 my motion requesting to vacate the default judgement and to allow me to defend my interest was filed by this Court.

6. As of 11/29/2023 I have not received a response on the letter submitted or the motion filed dated 10/23/2023.

7. I am respectfully reminding the Court I am Pro-Se, and that I can not appear because I am incarcerated. I would like the opportunity to respond, submit evidence and tell my side of the story.

DATED 11/29/2023

Respectfully,

Jesus Concepcion

Jesus Concepcion
Pro_Se Defendant
Register Number 58984509
80 29TH STREET
BROOKLYN, NY 11232

Case manager

Authorized by the Act of July 7, 1955
to Administer Oaths 18 USC 4004

Signed before me this
29th day of November 2023
Federal Bureau of Prisons
80 29th Street
Brooklyn, NY 11232

Jesus Concepcion 58984-509
80 29th St.
Brooklyn, NY 11232

NEW YORK NY 100
11 DEC 2023 PM 10 L

FREEDOM

Greenville County Commons Pleas
305 East North street
Greenville County Courthouse
Greenville, SC 29601-2120

29601-212199

APPENDIX A-7

Emergency Motion to Stay and Vacate Default Judgment, filed February 11, 2025

Document label superimposed on following pages

State of South Carolina
County of Greenville
Diversified Foods, Inc., Plaintiff

vs.

Jesus Concepcion, Kendy S. Tavarez a.k.a Kendy Solange Feliz, National Risk Solutions, LLC Defendants

The Court of Common Pleas
For the Thirteenth Judicial Circuit

Civil Action No: 2022-CP-23-00410

'25 FEB 11 AM 9:27
JAN OBERSHAIN GSC

Defendants seek an emergency Stay on the Default Judgment and Levy and seek to appeal the Default Judgment

I, Jesus Concepcion, being duly sworn, state as follows:

1. I am Pro-Se defendant in the above-captioned matter.

2. I am Not familiar with all of the records, pleadings or the dispositions in this matter due to being detained since August 8, 2021.

3. The Summons and Complaint were filed on January 18, 2022.

4. Defendants Kendy S. Tavarez a.k.a Kendy Solange Feliz who does not speak English and National Risk Solutions, LLC were served on 2/14/2022.

5. Defendants Kendy S. Tavarez a.k.a Kendy Solange Feliz and National Risk Solutions, LLC responsive pleadings were due on March 16, 2022.

6. Defendant Jesus Concepcion was served on 3/9/2022 while detained at MDC Brooklyn.

7. Defendant Jesus Concepcion's responsive pleading was due on April 8, 2022.

8. On March 17, 2022 Defendants Kendey S. Tavarez a.k.a Kendey Solange Feliz, and National Risk Solutions, LLC signed a [illegible] agreement to John M. Massetto, LLC and his receiving agent Colon Law Firm to represent all three defendants.

9. Please note the Defendants contracted the attorneys before the responsive pleadings.

10. Both Mr. Massetto and Mr. Colon failed to appear, plead, or otherwise respond to the Complaint.

11. Due to not responding the court granted a default judgment on 10/25/2022 on Defendants Jesus Concepcion, Kendey S. Tavarez a.k.a Kendey Solange Feliz, and National Risk Solutions, LLC.

12. After a year from March 16, 2022 [illegible] March of 2023 both Mr. Moretto and Mr. Coles via text messages and many prison recorded phone calls led Defendants Tavares and Evergreen to believe Mr. Moretto responded to the Complaint. In December of 2024 after again attempting to contact both attorneys I sent a complaint to O.D.C with supporting documents including the contract, and a years worth of text messages. (O.D.C. File # 24-DE-L-1920, 24-DE-L-1921)

13. After many attempts Pro Se Defendant sent a letter to the court explaining Mr. Morettos negligence, misconduct (6-1-23) and asking for a STAY.

14. Pro-Se Defendant never received a response from the court regarding the motion submitted 6-1-23.

15. In December of 2024 Pro-Se Defendant was made aware that a Sheriff's notice of Levy was issued for $23,531.69 + additional interest and fees.

16 Pro Se Defendant Tavi Evergreen, Defendants Kenley S. Tavares a.k.a. Kenley Tavares Sole and National Risk Solutions requests a "STAY" on the default judgment and allow us to appeal the judgment. Our response delays are due to the attorneys misconduct and my incarceration. My wife, Defendant Kenley Tavares does not speak English as the court may be aware of. I have now been transferred to the Spartanburg County Detention Center and may be able to correspond

with the court. The person incharge of mail at this facility has proven to be reliable.

17. I respectfully write the court as a Pro-Se Defendant due to not being able to afford representation or even able to afford the "Motion fees."

18. I ask for relief and Stay the execution of the judgment

By: Travis Covington

Travis Covington (524137) - Pro-Se
Spartanburg County Detention Center
950 Old Furman Ave.
Spartanburg, S.C. 29303

Signed before me this 30th day of May, 2025

Notary of Public for South Carolina
My Commission Expires: Feb 14, 2032

STATE OF SOUTH CAROLINA)
) REPRESENTATION AGREEMENT
COUNTY OF GREENVILLE)

The firm *The Law Offices of John M. Mussetto, LLC* does hereby agree to represent you. in the following action:

For legal consultation for case # 2022-CP-23-00240 for the next 30 days in anticipation (no guarantee) getting an extension in filing an Answer with the court

In consideration, agrees to pay *The Law Offices of John M. Mussetto, LLC*, a non-refundable flat fee of $5,000.00.

The flat fee is the entire payment for the specified legal work to be performed by our firm regardless of the amount of time that it takes to perform the legal work.

The flat fee will be earned by our firm immediately upon payment and will be deposited in our firm's business account rather than a client trust account.

When our representation ends, regardless of outcome, you will not be entitled to a refund of any portion of the flat fee.

You acknowledge that the flat fee will not be refunded to you because we will have made ourselves available to you, will have been precluded from representing and, therefore, will have earned this fee.

Your adversary, the opposing attorney, or others may engage in activities beyond our control that require time that was not originally contemplated. You will receive bills which set forth an itemized hourly statement for services rendered. Currently our rates are as follows:

(A) $250.00 Dollars per hour for the services of John M. Mussetto; and

(B) $90.00 Dollars per hour for the services of law clerk/paralegal.

In some cases, the court will order the adversary to pay part or all of your fee and out-of-pocket costs. If this is done in your case, you are still primarily liable for the payment of the total fees, suit money, and costs. Amounts received pursuant to court order will be credited toward your account. The court award of fees, suit money, or costs, if any, does not set or limit our fee in any way or your liability to us for fees, suit money, and costs. The pursuit of fees, suit money, and costs against your adverse party is an additional service we perform on your behalf, and you will be expected to pay us fees on the same basis as is set forth in this agreement for performing other services. Furthermore, if the court does assess fees, suit money, or costs, against the adverse party to apply on account of that which you owe to us, the collection of such award from the adverse party by way of contempt or any other proceeding shall also be considered as further services on your behalf. Accordingly, you shall be expected to pay for the cost of collection. In the event you discharge us as your attorneys at any time, or we withdraw as your attorneys, it shall be understood that we shall

of fees, suit money, and costs due us. Please understand, however, that you are at all times primarily liable to us for all fees, suit money, and costs, and any pursuit thereof against the adverse party is on your behalf and as an additional service to you.

Pursuant to Rule 407(1.5(f)) of the South Carolina Appellate Court Rules, a lawyer may charge an advance fee, which may be paid in whole or in in part in advance of the lawyer providing these services, and treat the fee as immediately earned if the lawyer and client agree in advance in a written fee agreement which notifies the client:

(1) of the nature of the fee agreement and the scope of services to be provided;

(2) of the total amount of the fee and the terms of payment;

(3) that the fee will not be held in a trust account until earned;

(4) that the client has the right to terminate the lawyer-client relationship and discharge lawyer; and

(5) that the client MAY be entitled to a refund of all or a portion of the fee if the agreed-upon legal services are not provided.

We have the right to withdraw from the case if you do not make payments required by this agreement, if you have misrepresented or failed to disclose material facts to us, or if you fail to follow our advice. In any of these events, you will execute such necessary documents will permit us to withdraw.

Should you receive any cash property settlements as part of your case, you agree to have this money deposited into our escrow account and give us the authority to pay any balance due us out of this money before transferring the balance to you, unless otherwise agreed in writing prior to the receipt of the funds.

You understand and agree that this agreement provides for services through trial on the merits of your case. You further understand and agree that should additional services by *The Law Offices of John M. Mussetto, LLC*, be necessary after issuance of a Final Order in this case, including an appeal by either party or motions for modifications, these services shall be considered a separate and individual case, and the fee arrangement therefore shall be determined by a separate agreement between you and the firm.

You expressly agree that representation in an appeal by either party shall be separate from this action and not included as a part of this contract.

In the event it is necessary to institute proceedings against you for the collection of fees and advances due to us by you, you will pay, in addition to any adjudication for such fees and advance, all costs and expenses necessitated thereby, including reasonable attorney's fees.

You acknowledge that we have made no guarantee regarding the disposition of any phase of your case. All our expressions relative to your case are only our opinion.

Any modification, continuation or reinstatement of this agreement shall be made in writing, signed by a representative of the firm and you, and the same shall be attached hereto.

You further acknowledge, by execution hereof, that the foregoing contractual agreement has been fully explained to you, that you fully understand the same and that you execute this contractual agreement freely and voluntarily.

FEE RECEIVED BY AGENT, COLÓN LAW FIRM:

Amount: $ $5,000.00

By signing your name below, you acknowledge that you have received a copy of this agreement.

Dated this #~~Matter.OpenDate~~# 3/17/22

The Law Offices of John M. Mussetto, LLC

Representative

JOHN M. MUSSETTO

401 Pettigru Street
Greenville, SC 29601
www.mussettolaw.com

tel: (864) 283-0040
fax: (864) 283-0080
john@mussettolaw.com

- Criminal Defense - D.U.I. - Family Law -

79

+1 (973) 943-8833

es la que dice (ORDER)

Disculpeme por los cambios.

Cuando usted pueda llameme porfavor, gracias

Le reenvié unas fotos por WhatsApp de lo que El me mando.

OK, el Abogado la espera.

mar 17, 2022, 3:16 p.m.

Gracias por todo Sr Colon igualmente para el Sr Mussetto.

Siempre, estamos aqui para servirle.

mar 18, 2022, 6:14 a.m.

Buenos días Colon, usted sabe si la carta la enviarán hoy ?
Perdón que me refiera a usted y no directamente a Mussetto.

Buenos días, si ayer mismo.

mar 19, 2022, 6:22 a.m.

Buenos días Colon, Gracias por su respuesta.

Jesús me pidió ver que le escribió Mussetto al Juez porfavor.

+1 (973) 943-8833

Mussetto al juez corte [illegible]

mar 21, 2022, 9:27 a.m.

Buenos días colon feliz lunes.

Estoy preocupada ayer tuve un mal día en mi trabajo no dejaba de pensar que hoy lunes puede pasar algo.

- Si esas personas se aparecieran que debo hacer?

- Como sabemos que juez recibió la carta?

- Con una copia de la carta -puedo evitar algo por la espera de la respuesta del juez?

- Mussetto me puede mandar una copia por mi email para que Jesús la lea ?

Kjconcepcion2021@gmail.com

Buenos días, le mande su comunicación a Mussetto. El le mandara a ustedes la confirmación a:

Kjconcepcion2021@gmail.com

mar 21, 2022, 11:40 a.m.

Gracias Colon de verdad se lo agradezco.

Siempre.

mar 28, 2022, 12:26 p.m.

7

+1 (973) 943-8833

Porfavor envieme el correo y el numero de la oficina de Mussetto.

Que gente... Dale mi numero de cellular a Jesus para que el me llame.

Dile que pregunte por una linea privada para llamar a su Abogado Ken Colon.

John Mussetto
864-283-0908
John@mussettolaw.com

1 respuesta

Ook

Jesus llamo a Mussetto y no lo pido contactar en diferentes ocasiones

Que gente... Dale mi numero de cellular a Jesus para que el me llame.

Ok

Ahora es más difícil Jesus llamar porque lo tienen en una área restringida por protección.

Proteccion a que o de quien?

Supreme Court of South Carolina
Greenville County
13th Judicial Circuit

Re: **2022CP2300240** **LETTER MOTION TO VACATE DEFAULT JUDGEMENT**

August 20, 2023

To Whom It Concerns,

BACKGROUND

1. My name is Jesus Concepcion, and I am a Defendant in the above-referenced action.
2. This action was filed in January 2022.
3. When this action was filed, I was incarcerated in New York, and I am currently incarcerated in New York.
4. On October 25, 2022, this Court entered default due to my failure to appear, plead, or defend.

I ASK THAT THIS COURT VACATE THE DEFAULT JUDGEMENT ENTERED AGAINST ME

5. While incarcerated, I retained and paid an Attorney to represent me in this instant action.
6. Said retainment was *before* my responsive pleadings were due.
7. Unbeknownst to me, the Attorney took my money and never "appeared" in this action.
8. I found out that my Attorney never "appeared" after the deadline for the responsive pleadings were due.

I SHOULD BE ALLOWED TO DEFEND MY INTERESTS

9. The consequences of this lawsuit are serious and could deprive me of liberty interests.

10. I should be given the opportunity to respond and tell my side of the story.

11. My previous Attorney, an Officer of the Court, purportedly committed misconduct and took advantage of me by taking my money; promising that he would respond; and not responding.

12. If I knew that my Attorney would not respond by the deadline, I would have responded on my own behalf.

DATED: August 20, 2023

Respectfully,

Jesus Concepcion
Pro-Se Defendant
Register # 58984-509
80 29TH STREET
BROOKLYN, NY 11232

Re: 2022CP2300240

LETTER NOTIFING THE COURT I CAN NOT APPEAR ON THE ABOVE REFFERANCED ACTION AND I WOULD LIKE TO DEFEND MY INTEREST

To Whom it Concerns,

1. My name is Jesus Concepcion, and I am the Pro-Se Defendant in the above-referenced action.

2. I am incarcerated at the Federal Metropolitan Detention Center in Brooklyn, New York since August of 2021.

3. On October 25, 2022, this Court entered default due to my failure to respond, plead, or defend.

4. After I was notified of the default judgment I wrote a letter to the Court explaining my circumstances in getting legal representation and unbeknownst to me, the Attorney we hired took our money and never "appeared" or responded in this action.

5. On October 23, 2023 my motion requesting to vacate the default judgement and to allow me to defend my interest was filed by this Court.

6. As of 11/29/2023 I have not received a response on the letter submitted or the motion filed dated 10/23/2023.

7. I am respectfully reminding the Court I am Pro-Se, and that I can not appear because I am incarcerated. I would like the opportunity to respond, submit evidence and tell my side of the story.

DATED 11/29/2023

Respectfully,

Jesus Concepcion

Jesus Concepcion
Pro_Se Defendant
Register Number 58984509
80 29TH STREET
BROOKLYN, NY 11232

Case manager

Authorized by the Act of July 7, 1955
to Administer Oaths 18 USC 4004

Signed before me this
24th day of November 2023
Federal Bureau of Prisons
80 29th Street
Brooklyn, NY 11232

O'CONNOR LAW FIRM
2100 SOUTHBRIDGE PARKWAY, SUITE 650
BIRMINGHAM, ALABAMA 35209
516-504-8398

September 3, 2023

CONFIDENTIAL AND PRIVILEGED

Re: Jesus Concepcion

Mr. Concepcion,

On September 2, I reviewed the Greenville South Carolina Docket in regard to DFF. On August 28, 2023, the Court denied the motion to dismiss filed by Defendant Smart. There is no record of your motion to stay the proceedings having been filed, nor received.

I propose that you refile the motion, sent certified mail, with the appropriate cover letter and money order. This should be done on September 5, 2023.

Next, as discussed, I read through the Contract with Musetto. I spoke with both Mr. Musetto and Colon. The contractual agreement is contradictory and ambiguous. We should discuss strategies going forward and send a demand letter as soon as possible. I will need your wife's permission to add her information to the demand letter. I would like for you to speak with her before I contact her so that she knows what I am talking about.

I can not bring litigation in South Carolina. We can try in New York, and I could probably represent you. However, New York Courts probably won't have jurisdiction over the matter. The cost to commence litigation in New York State Court's is $210. The parties have to be served, and the process server charges about $100 per person for personal service. Thus, it would cost around $410 to file and serve the parties. There is a high chance the case will be dismissed in New York. If you would like to try, we can try. The other option is to file in South Carolina, but I will not be able to represent you in South Carolina.

In any event, if you and your wife consent, I think a demand letter should be sent out on September 5th. If you and your wife consent, I can send this letter out on your behalf.

Kevin O'Connor

TRULINCS 58984509 - CONCEPCION, JESUS - Unit: BRO-G-A

FROM: Oconnor, Kevin
TO: 58984509
SUBJECT: RE: Checking in
DATE: 11/28/2023 12:06:02 PM

Good Morning,

1. I received an email from Musetto basically showing emails between him and another Attorney in the DFF case from some time ago, the emails in my opinion are irrelevant.. I will print and bring to you.

2. As you know, the mail process at MDC is horrible. Any correspondence from SC will be sent directly to you, but I have been keeping an eye on the docket.

3. For the DFF case, your case number is : 2022CP2300240.
4. There is a "Roster Meeting" for your case in April, 2024.
5. There has been no additional filings since your motion which was filed by the Court on 10/23/23.
6.. In addition to your motion which was filed by the Court on 10/23, the Court also filed a letter that I sent to all of the Attorney's of record in the matter. That letter was dated October 19th..
7. I anticipate that something will be filed between now and April (the next scheduled appearance).
8. The court updated your address to reflect MDC Brooklyn.
9. There is not much more that I can do to assist you. I do not have the retainer agreement in front of me, but I helped you submit your motion to the Court as we agreed upon. The Court has not made any decision on your motion. I am not admitted in SC, so I can not do anything on your behalf without breaking the law. I will continue to check the docket and update you as time goes on.
10. In regard to the Musetto matter, as you know, he made an offer to settle. I relayed the offer to you. You did not want to settle.

Going forward, I recommend you write a letter to the SC judge stating something to the effect that you filed a motion, the motion has not been acted upon, that you're pro-se, and that you can not appear because you are incarcerated. I will pick up the letter for you and mail it on your behalf. If there is a notary at MDC, please get it notarized. Time is of the essence for this. Clear and concise, there is not much to it.

With Musetto, please let me know how you want to proceed. You can file a suit in SC, but I will not be able to appear on the record for you. So, it is going to be your wife going back and forth to Court unless she retains a SC Attorney.

Let me know when you can get that letter written and I will pick up from you ASAP. I will be out of town Fri-Monday.

JESUS CONCEPCION on 11/28/2023 7:50:27 AM wrote
Hope you are doing well. Any updates on SC? The court has not responded to any of my motions. Is this to be expected?

Concepcion

1/30/25

Jesus Concepcion · 524137
Spartanburg County Detention Center
950 California Ave. Spartanburg, S.C. 29303

Dear County Clerk,

Please find enclosed herewith a motion to STAY/VACATE the Default Judgment against Defendants Jesus Concepcion, Kendry S. Tavarez a.k.a Kendry Solange Feliz, and National Risk Solutions, LLC.

I'm also enclosing supporting documentation clearly showing I hired and paid attorneys to respond to the pleadings before the due date and how they misled us for an entire year.

Enclosed please find the following:

- Motion to STAY - with cover sheet 5 pages
- Representation Agreement - 4 pages
- Text messages - 3 pages of (30) pages
- motions sent to the court - 3 pages
- correspondence from an attorney regarding the issue.

Respectfully,

Jesus Concepcion 524137. Jesus Concepcion

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS
13TH JUDICIAL CIRCUIT

CASE NO.: 2022 -CP- 23 - 00240

DiscoverFresh Foods, Inc., Plaintiff,
vs.
Jesus Concepción, Kendry S. Tavares a.k.a Kendry Solange Feliz, National Risk Solutions, LLC. Defendant.

MOTION AND ORDER INFORMATION FORM AND COVERSHEET

25 FEB 11 AM 9:27 KM
JOHN FRESHWATER CLERK OF COURT GREENVILLE CO. SC

Plaintiff's Attorney:	Defendant's Attorney: Pro-Se - Jesus Concepcion
_____, Bar No. _____	_____, Bar No _____
Address:	Address:
Phone: _____ Fax _____	Phone: _____ Fax _____
E-mail: _____ Other: _____	E-mail: _____ Other: _____

☒ **MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)**
☐ **FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)**
☐ **PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)**

SECTION I: Hearing Information

Nature of Motion: Vacate Default - STAY
Estimated Time Needed: _____ Court Reporter Needed: ☒ YES/☐ NO

SECTION II: Motion/Order Type

☒ Written motion attached
☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Jesus Concepcion - Pro-Se 1/25, 2025
Signature of Attorney for ☐ Plaintiff / ☒ Defendant Date submitted

SECTION III: Motion Fee

☒ PAID – AMOUNT: $ 25.00
☐ EXEMPT: (check reason)
- ☐ Rule to Show Cause in Child or Spousal Support
- ☐ Domestic Abuse or Abuse and Neglect
- ☒ Indigent Status ☐ State Agency v. Indigent Party
- ☐ Sexually Violent Predator Act ☒ Post-Conviction Relief
- ☐ Motion for Stay in Bankruptcy
- ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
- ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions
  Name of Court Reporter: _____
- ☒ Other: Incarcerated in pre trial at Spartanburg County

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.
☐ Other: _____

JUDGE CODE _____
Date: _____, 20__

CLERK'S VERIFICATION

Collected by: KM Date Filed: Feb. 11, 2025

☒ MOTION FEE COLLECTED: $ 25.00
☐ CONTESTED – AMOUNT DUE: $ _____

SCCA 233 (11/2003)

APPENDIX A-8

Motion for Appointment of Guardian ad Litem and Renewed Motion to Stay, filed April 1, 2025

Document label superimposed on following pages

'25 APR 1 PM 12:08
JAY GRESHAM COC GVL SC

State of South Carolina
County of Greenville
DiscoverFresh Foods, Inc. Plaintiff,
VS.
Jesvis Concepcion, Kendry S. Tavarez a.k.a
Kendry Solange Feliz, National Risk Solutions LLC, Defendents

Civil Action No: 2022-CP-23-0040

Motion to Stay Default Judgment and to Appoint a Guardin ad litem

① Defendant Jesvis Concepcion request that the court appoint a Guardian ad litem pursuant to Rule 17(c) and 17(d,4,6,7) Code §15-5-320 of the South Carolina Rule of Civil Procedure.

② On January 18, 2022 the Plaintiff filed the above referanced Complaint and Summons

③ Defendant Jesvis Concepcion was personally served a copy of the Summons and Complaint while incarcerated in the State of New York at the Brooklyn MDC Detention Center on March 9th, 2022. The answer was due on April 8th, 2022.

(1)

④ On April 14, 2022 the Plaintiff filed a Motion for Entry of Default for failing to respond to the Complaint. Line 9 of aforesaid Motion referenced Rule 17 ("defendants are not a minor or incompetent"). Rule 17 (c), retains the provisions in Code §15-5-320 as to GAL for incarcerated persons outside the State in which I was at the time up until October of 2024.

⑤ I sent letters to the court stating my intentions of wanting to contest the suit and counter sue, I also tried to hire attorneys to respond to the complaint and they failed to do so. What I did not know was that because I was detained out of State I could have requested to be appointed a GAL.

⑥ On October 25, 2022 as a result of failing to appear, plead or otherwise respond and not having a GAL to protect my rights the court granted a Default Judgment for $6,523,537.64

⑦ I wish the court to Stay the Default Judgment and to appoint a GAL to help me navigate through the referenced civil matter while currently incarcerated at Spartanburg County Detention Center.

Respectfully,
Jason Cooper
3/6/25

Code of Laws of South Carolina 1976 Annotated
South Carolina Rules of Civil Procedure
IV. Parties

Rule 17, SCRCP

RULE 17. PARTIES PLAINTIFF AND DEFENDANT: CAPACITY

Currentness

(a) Real Party in Interest. Every action shall be prosecuted in the name of the real party in interest. An executor, administrator, **guardian**, bailee, trustee of an express trust, a party with whom or in whose name a contract has been made for the benefit of another, or a party authorized by statute may sue in his own name without joining with him the party for whose benefit the action is brought; and when a statute so provides, an action for the use or benefit of another shall be brought in the name of the State. No action shall be dismissed on the ground that it is not prosecuted in the name of the real party in interest until a reasonable time has been allowed, after objection, for ratification of commencement of the action by, or joinder or substitution of, the real party in interest; and such ratification, joinder, or substitution shall have the same effect as if the action had been commenced in the name of the real party in interest.

(b) Capacity to Sue or Be Sued. The capacity of a party to sue or be sued shall be determined by the law of this State.

(c) Minor or Incompetent Persons. Whenever a minor or incompetent person has a representative, such as a general **guardian**, committee, conservator, or other like fiduciary, the representative may sue or defend on behalf of the minor or incompetent person. If a minor or incompetent person does not have a duly appointed representative he may sue by his next friend or by **guardian** ad litem. The court shall appoint a **guardian** ad litem for a minor or incompetent person not otherwise represented in an action or shall make such order as it deems proper for the protection of the minor or incompetent person. 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).

(d) Guardians Ad Litem. Guardians ad litem appearing in the courts of this State, or before any agency, board or commission from which an appeal to the courts of this State shall lie, shall be qualified and appointed in accordance with the provisions of this rule.

(d)(1) *Who May Appoint.* **Guardians** ad litem may be appointed by the court in which the action is pending, the judge of probate, the clerk of court, or the master-in-equity of the county wherein the minor, or incompetent or imprisoned person resides, or in the county in which the action is pending or is to be filed.

(d)((2) *Who May Be Appointed.* The general **guardian** of a minor or incompetent person may be appointed **guardian** ad litem, if he has no interest adverse to that of the person whom he represents in the action. No other person may be appointed **guardian** ad litem of a minor or incompetent or imprisoned person unless he be fully competent to understand and protect the rights of the person whom he represents, has no interest adverse to that of the person whose interest he represents, is not connected or associated with the attorney or counsel of the adverse party, and is not the attorney for the adverse party. If the **guardian** ad litem is an attorney, it shall not be necessary that he be represented by an additional attorney; but the attorney of the adverse party shall not represent the **guardian** ad litem.

WESTLAW © 2025 Thomson Reuters. No claim to original U.S. Government Works.

(d)((3) *Minors.* The **guardian** ad litem for a minor party shall be appointed upon the application of the minor, if he be of the age of 14 years or over; if under that age upon the application of his parent, general or testamentary **guardian**; or of a relative or friend. If application be made by a relative or friend, other than a parent, notice thereof must first be given to the minor's general or testamentary **guardian**, if he has one; if he has none, then to the person with whom such minor resides.

(d)((4) *Imprisoned Persons.* The **guardian** ad litem for an imprisoned person shall be appointed upon application of such person or of a relative or friend. If application be made by a relative or friend, notice thereof must first be given to such imprisoned person.

(d)((5) *Incompetent Persons.* The **guardian** ad litem for an incompetent person shall be appointed upon the application of his **guardian** or committee or of a relative or friend. If application be made by a relative or friend, notice thereof must be first given to the incompetent person's **guardian** if he has one; if he has none, then to the person with whom such incompetent person resides.

(d)((6) *Failure to Apply.* If no application for appointment of a **guardian** ad litem be made by or in behalf of a minor, imprisoned, or incompetent party within thirty (30) days after service of the summons upon such party, then the **guardian** ad litem may be appointed upon application of any other party to the action, after first giving notice of such application to the person or persons to whom notice of application must be given under subsections (3), (4), and (5) of this rule.

(d)((7) *Out-of-State Party.* When a minor, imprisoned or incompetent party resides out of the State or is absent therefrom, the court shall make such orders allowing additional time, or other orders as may be necessary to protect the interest of such parties.

(e) Unknown Owners or Heirs as Parties. In all actions or proceedings to obtain title or possession, or to remove adverse claim of title, or to quiet title, or for partition, or for sale, or for foreclosure of any encumbrance, or enforcement of any trust, or specific performance of any contract, or for any other disposition of any property, real, personal, or mixed, situated within the State including choses in action either situated within or due or claimed to be due from persons, firms or corporations resident within the State, persons may be made parties defendant either on the filing of the complaint, counterclaim or cross-claim, as the case may be, or at any time thereafter by amendment thereof, by the name and description of unknown owners, or unknown heirs or unknown devisees of any deceased persons, or by any such designations.

(f) Actions for Partition of Real Estate of Deceased Person. In an action for partition of real estate of a deceased person, the legal representative shall be a party to the action unless the estate of the deceased person has been closed and the legal representative discharged or it appears to the court that there are no debts chargeable against the estate of the deceased. In all actions for partition all tenants in common shall be parties, but if the consent of anyone who should be joined cannot be obtained, he may be made a defendant.

Credits

[Amended effective May 1, 1986.]

Editors' Notes

Relevant Additional Resources

Additional Resources listed below contain your search terms.

NOTES

This Rule 17(a) is current Federal Rule 17(a). The first sentence and the first clause of the second sentence are substantially the same as Code §§ 15-5-70 and 80. The Federal Rule adds to those who may sue in the name of others, "**guardian**" and "bailee." Those listed in the rule are considered illustrative and do not mean that others may not also fall into the category of those who

can sue in the name of another. The last clause of the second sentence permits an action for the use or benefit of another to be brought in the name of the State. This is obviously needed but not provided for in §§ 15-5-70 and 80. The last sentence of the rule is intended to prevent forfeiture in those cases in which the determination of the proper party to sue is difficult or when there has been an honest mistake. This provision may change existing State law, because precedents hold that lack of the proper party is jurisdictional. Hodges v. Lake Summit Co., 155 S.C. 436, 152 S.E. 658 (1928); Wilson v. Gibbes Machine Co., 189 S.C. 426, 1 S.E.2d 490 (1938). Therefore, the filing of the suit might not bar the applicable statute of limitations, absent this provision.

This Rule 17(b) is the first sentence of the Federal Rule and includes the conflicts law of the State. The remainder of Federal Rule 17(b) provides for problems peculiar to Federal courts and is deleted. The rule does not attempt to define the capacities of parties to sue or be sued, but refers to the law that defines these matters.

This Rule [17(c)] retains the principal provisions of Code § 15-5-310. The last sentence, which does not appear in Federal Rule 17(c), retains the provisions in Code § 15-5-320 as to **guardians** ad litem for imprisoned persons. The Rule narrows existing practice by providing for a **guardian** ad litem only when the person is imprisoned outside the State. Thus in the most common civil cases involving prisoners, post-conviction relief proceedings, a **guardian** would not be required for an in-state prisoner who is normally represented by appointed or retained counsel; but the court has the discretion to appoint a **guardian** for an in-state prisoner.

This provision [Rule 17(d)] does not appear in the Federal Rule. It is a restatement of Code §§ 15-5-310 to 380. These provisions were added to Rule 17 as the Federal Rule refers to the State law on this subject.

This Rule 17(d)(1) is drawn principally from Code § 15-5-310 and Code § 15-5-360 dealing with the appointment of **guardians** for minors and incompetent persons.

This Rule 17(d)(2) is drawn from Circuit Court Rule 6 with minor textual changes.

This Rule 17(d)(3) is drawn from Code § 15-5-330 with minor textual changes.

This Rule 17(d)(4) is drawn from Code § 15-5-370 with minor textual changes.

This Rule 17(d)(5) is drawn from Code § 15-5-360.

This Rule 17(d)(6) provides for the appointment of a **guardian** upon motion of any other party, if an application for the appointment has not been received within 30 days after the service of summons, and is similar language to Code §§ 15-5-340, 360 and 370. The provision incorporates the thirty day period for answering a complaint contained in Circuit Court Rule 102.

This Rule 17(d)(7) is similar to Code § 15-5-350, and states the obvious proposition that the court has the authority to protect the interest of the individuals for whom **guardians** have not been appointed.

This Rule 17(e) is added to supplement Rule 10(a) as to unknown parties, providing for the use of fictitious names similar to Code § 15-13-70. Actions against unknown parties are peculiar to State Court jurisdiction and this section is added to the Federal Rule to complete the procedure.

This Rule 17(f) does not appear in the Federal Rules. It is drawn from the first paragraph of present Circuit Court Rule 54. The intent of the provision is to insure that the debtors of the estate may reach the proceeds from the partition of the real estate which technically becomes the property of the heirs or beneficiaries upon the death of the deceased. Requiring the legal representative to be joined in all cases, except discharge or where there are no debts, serves this purpose. This Rule is not jurisdictional and partition will occur even if the legal representatives are not named or none has been appointed. See Smith v. Hawkins, 254 S.C. 423, 175 S.E.2d 824 (1970). The provisions of the second paragraph of Circuit Court Rule 54 and all of Circuit Court Rule

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55, as to actions for partition of separate tracts, are contained in Rule 53 of these Rules. See also Rule 71 of these Rules for procedure on foreclosure and partition actions.

Notes to 1986 Amendments
This amendment [to Rule 17(d)(1)] permits a **guardian** ad litem to be appointed before the action is filed.

CROSS REFERENCES
Liability for costs of **guardian** by whom infant plaintiff appeared, see § 15-37-170.

Relevant Notes of Decisions (9)
View all 42
Notes of Decisions listed below contain your search terms.

Guardians ad litem
Family court was not obligated to appoint **guardian** ad litem for wife on the basis of mental incompetence in divorce proceedings, even though wife had allegedly suffered a traumatic brain injury; wife demonstrated unwise and sometimes illogical behavior but such conduct was generally directed at prolonging and complicating divorce proceedings and attempting to maintain marital assets for her own benefit, the only evidence as to wife's mental state was husband's testimony that she had "issues," wife was not unable to communicate with her attorneys, family court, or her children's GAL or unable to understand family court's instructions, and neither wife nor her counsel raised incompetence as an issue. Rogers v. Rogers (S.C.App. 2020) 851 S.E.2d 447.

The rationale for appointing a **guardian** ad litem (GAL) for a prisoner is not mental deficiency, but the physical restraint of imprisonment. Ex parte Foster (S.C. 2002) 350 S.C. 238, 565 S.E.2d 290.

When a prisoner is already represented by competent counsel, or when he has "made an informed decision not to contest the suit," the circuit court need not appoint a **guardian** ad litem (GAL). Ex parte Foster (S.C. 2002) 350 S.C. 238, 565 S.E.2d 290.

Matter involving erroneous appointment of counsel as **guardian** ad litem (GAL) of an inmate in a civil forfeiture action would be remanded for trial court to determine whether the inmate should be appointed a GAL, and if so, whether counsel should be appointed to that position, under rule governing in appointment procedure of GALs, in consideration of whether inmate was indigent, whether the nature of the civil forfeiture action was so complex that the fact of the inmate's incarceration would unfairly hamper his ability to defend his case, if a GAL was appointed, whether she would be entitled to be compensated out of the proceeds of the forfeited property for her investigative costs and/or for her time as a "proper expense of the proceeding." Ex parte Foster (S.C. 2002) 350 S.C. 238, 565 S.E.2d 290.

Ordinarily, the inmate should be brought before the trial court prior to the decision to appoint a **guardian** ad litem (GAL) in order for the court to adjudicate the inmate's indigency status, and to allow the trial judge to assess the particular inmate's needs on an individual basis; if no GAL is appointed, then arrangements must be made to ensure the inmate's presence at the trial on the merits. Ex parte Foster (S.C. 2002) 350 S.C. 238, 565 S.E.2d 290.

Trial court was precluded from appointing counsel as **guardian** ad litem (GAL) for inmate in a civil forfeiture action where counsel had been appointed as inmate's de facto attorney, and not as a "mere" GAL, and order appointing counsel was devoid of any discussion of the *Dibble* factors. Ex parte Foster (S.C. 2002) 350 S.C. 238, 565 S.E.2d 290.

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RULE 17. PARTIES PLAINTIFF AND DEFENDANT: CAPACITY, SC R RCP Rule 17

Incarcerated wife waived right to **guardian** ad litem in divorce and custody proceedings when she failed to move for appointment until the day of the final hearing and when she had been imprisoned for over four months giving ample opportunity to apply for a **guardian** ad litem. McCuen v. McCuen (S.C.App. 2002) 348 S.C. 179, 558 S.E.2d 926.

The trial court in a dissolution action adequately considered the husband's mental capacity and appropriately found no showing of incompetence requiring the appointment of a **guardian** ad litem, even though he was on disability retirement due to "dementia," where the wife's contention that a **guardian** ad litem was required was based solely on the fact that he was on disability retirement. Zaragoza v Zaragoza (1992, SC App) 420 SE2d 516.

South Carolina Rule of Civil Procedure permitting appointment of **guardian** ad litem upon application of any other party to the action did not create duty requiring automobile liability insurer for driver and owner to investigate need for **guardian** ad litem for injured bicyclist. Fowler v. State Farm Mutual Automobile Insurance Company (C.A.4 (S.C.) 2019) 759 Fed.Appx. 160, 2019 WL 141071.

Rules Civ. Proc., Rule 17, SC R RCP Rule 17
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Code of Laws of South Carolina 1976 Annotated
South Carolina Rules of Civil Procedure
II. Commencement of Action--Service of Process, Pleadings, Motions and Orders

Rule 4, SCRCP

RULE 4. PROCESS

Currentness

(a) Summons: Issuance. The summons shall be issued by plaintiff or plaintiff's attorney. Copies of the original summons shall be served upon each defendant.

(b) Same: Form. The summons shall be signed by the plaintiff or his attorney, contain the name of the State and county, the name of the court, the file number of the action, and the names of the parties, be directed to the defendant, state the name and address of the plaintiff's attorney, if any, otherwise the plaintiff's address, and the time within which these rules require the defendant to appear and defend, and shall notify him that in case of his failure to do so judgment by default will be rendered against him for the relief demanded in the complaint.

(c) By Whom Served. Service of summons may be made by the sheriff, his deputy, or by any other person not less than eighteen (18) years of age, not an attorney in or a party to the action. Service of all other process shall be made by the sheriff or his deputy or any other duly constituted law enforcement officer or by any person designated by the court who is not less than eighteen (18) years of age and not an attorney in or a party to the action, except that a subpoena may be served as provided in Rule 45.

(d) Summons: Personal Service. The summons and complaint must be served together. The plaintiff shall furnish the person making service with such copies as are necessary. Voluntary appearance by defendant is equivalent to personal service; and written notice of appearance by a party or his attorney shall be effective upon mailing, or may be served as provided in this rule. Service shall be made as follows:

(d)(1) *Individuals.* Upon an individual other than a minor under the age of 14 years or an incompetent person, by delivering a copy of the summons and complaint to him personally or by leaving copies thereof at his dwelling house or usual place of abode with some person of suitable age and discretion then residing therein, or by delivering a copy to an agent authorized by appointment or by law to receive service of process.

(d)(2) *Minors, Incompetents and Persons Confined.* Upon a minor under the age of 14 years, a person judicially declared incapable of conducting his own affairs, or an incompetent person by delivering a copy of the summons and complaint to such minor, or incompetent personally and also a copy to (a) the **guardian** or committee of such person, or if there be none such within the State upon (b) a parent or other person having the care and control of such person, or (c) any competent person with whom he resides or (d) in whose service he is employed. If the individual upon whom service is made is a minor between the ages of 14 and 18, who lives with a parent or **guardian**, a copy of the summons and complaint shall likewise be served upon said parent or **guardian**, if said parent or **guardian** resides within the State. Service on imprisoned persons or persons confined in a state hospital or similar institution, in or out of this State, shall be made by delivering a copy of the summons and complaint to the confined person personally; and service shall be made by the sheriff of the county in which the person is imprisoned or confined. In cases of persons imprisoned, and patients in a state hospital or similar institution, personal service of process may be made by the superintendent of the institution or by the director of the prison system or by assistants duly

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designated by the superintendent or the director in writing for the purpose of making service of process, instead of the sheriff. The superintendent or the director or their designated assistants shall not be entitled to any costs therefore. Service on confined or imprisoned persons shall also conform to the provisions of § 15-9-510, S.C.Code, 1976.

(d)(3) *Corporations and Partnerships.* Upon a corporation or upon a partnership or other unincorporated association which is subject to suit under a common name, by delivering a copy of the summons and complaint to an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process and if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the defendant.

(d)(4) *State of South Carolina.*

(A) When State a Party. Upon the State of South Carolina by delivering a copy of the summons and complaint to the Attorney General, or when another official is designated to be served by the statute permitting such action by delivering a copy of the summons and complaint to that official and sending a copy of the summons and complaint by registered or certified mail to the Attorney General at Columbia.

(B) When Unconstitutionality of Statute Is Asserted. In any action attacking the Constitutionality of a State statute when the State, officer or agency is not made a party, a copy of the summons and complaint shall be sent by registered or certified mail to the Attorney General.

(d)(5) *State Officer or Agency.* Upon an officer or agency of the State by delivering a copy of the summons and complaint to such officer or agency and by sending a copy of the summons and complaint by registered or certified mail to the Attorney General at Columbia. If the agency is a corporation the copy shall be delivered as provided in paragraph (3) of this subdivision of this rule.

(d)(6) *Governmental Subdivision.* Upon a municipal corporation, county or other governmental or political subdivision subject to suit, by delivering a copy of the summons and complaint to the chief executive officer or clerk thereof, or by serving the summons and complaint in the manner prescribed by statute for the service of summons and complaint or any like process upon any such defendant.

(d)(7) *Statutory Service.* Service upon a defendant of any class referred to in paragraph (1) or (3) of this subdivision of this rule is also sufficient if the summons and complaint are served in the manner prescribed by statute.

(d)(8) *Service by Certified Mail.* Service of a summons and complaint upon a defendant of any class referred to in paragraph (1) or (3) of this subdivision of this rule may be made by the plaintiff or by any person authorized to serve process pursuant to Rule 4(c), including a sheriff or his deputy, by registered or certified mail, return receipt requested and delivery restricted to the addressee. Service is effective upon the date of delivery as shown on the return receipt. Service pursuant to this paragraph shall not be the basis for the entry of a default or a judgment by default unless the record contains a return receipt showing the acceptance by the defendant. Any such default or judgment by default shall be set aside pursuant to Rule 55(c) or Rule 60(b) if the defendant demonstrates to the court that the return receipt was signed by an unauthorized person. If delivery of the process is refused or is returned undelivered, service shall be made as otherwise provided by these rules.

(d)(9) *Service by Commercial Delivery Service.* Service of a summons and complaint upon a defendant of any class referred to in paragraph (1) or (3) of this subdivision of this rule may be made by the plaintiff or by any person authorized to serve process pursuant to Rule 4(c) by a commercial delivery service which meets the requirements to be considered a designated delivery service in accordance with 26 U.S.C. § 7502(f)(2). Service is effective upon the date of delivery as shown in the delivery record of the commercial delivery service. Service pursuant to this paragraph shall not be the basis for the entry of a default or a judgment by default unless the record contains a delivery record showing the acceptance by the defendant which includes an original signature or electronic image of the signature of the person served. Any such default or judgment by default shall be

set aside pursuant to Rule 55(c) or Rule 60(b) if the defendant demonstrates to the court that the delivery receipt was signed by an unauthorized person. If delivery of the process is refused or is returned undelivered, service shall be made as otherwise provided by these rules.

(e) Same: Other Service. Whenever a statute or an order of court provides for service of a summons and complaint or of a notice, or an order upon a party not an inhabitant of or found within the State, service shall be made under the circumstances and in the manner prescribed by the statute, rule, or order.

(f) Territorial Limits of Effective Service. All process other than a subpoena may be served anywhere within the territorial limits of the State, and, when a statute so provides, beyond the territorial limits of the State. A subpoena may be served within the territorial limits provided in Rule 45.

(g) Proof and Return. The person serving the process shall make proof of service thereof promptly and deliver it to the officer or person who issued same. If served by the sheriff or his deputy, he shall make proof of service by his certificate. If served by any other person, he shall make affidavit thereof. If served by publication, the printer or publisher shall make an affidavit thereof, and an affidavit of mailing shall be made by the party or his attorney if mailing of process is permitted or required by law. Failure to make proof of service does not affect the validity of the service. The proof of service shall state the date, time and place of such service and, if known, the name and address of the person actually served at the address of such person, and if not known, then the date, time and place of service and a description of the person actually served. If service was by mail, the person serving process shall show in his proof of service the date and place of mailing, and attach a copy of the return receipt or returned envelope when received by him showing whether the mailing was accepted, refused, or otherwise returned. If the mailing was refused, the return shall also make proof of any further service on the defendant pursuant to paragraph (8) of subdivision (d) of this rule. The return along with the receipt or envelope and any other proof shall be promptly filed by the clerk with the pleadings and become a part of the record. If service was by commercial delivery service, the person initiating the service of process shall make an affidavit identifying the process or other documents served and shall attach to the affidavit a delivery record of the commercial delivery service which shall contain the date, time, and place of delivery, the name of the person served, and include an original signature or electronic image of the signature of the person served. The affidavit and delivery record and any other proof shall be promptly filed by the clerk with the pleadings and become a part of the record.

(h) Proof of Service Without the State. When the service is made out of the State the proof of such service may be made, if within the United States, by affidavit before:

(1) Any person in this State authorized to make an affidavit;

(2) A commissioner of deeds for this State;

(3) A notary public who shall affix thereto his official seal; or

(4) A clerk of a court of record who shall certify the same by his official seal.

(i) Amendment. At any time in its discretion and upon terms as it deems just, the court may, by written order, allow any process or proof of service thereof to be amended, unless it clearly appears that material prejudice would result to the substantial rights of the party against whom the process issued.

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(j) Acceptance of Service. No other proof of service shall be required when acceptance of service is acknowledged in writing and signed by the person served or his attorney, and delivered to the person making service. The acknowledgement shall state the place and date service is accepted.

Credits

[Amended effective May 1, 1986; July 1, 1994; July 1, 1995; January 31, 2013; May 1, 2013; May 2, 2022.]

Notes of Decisions containing your search terms (0)

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Rules Civ. Proc., Rule 4, SC R RCP Rule 4

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Code of Laws of South Carolina 1976 Annotated
Title 15. Civil Remedies and Procedures
Chapter 9. Summonses. Orders of Publication and Service of Papers Generally (Refs & Annos)
Article 3. Personal or Substitute Service in State

Code 1976 § 15-9-510

§ 15-9-510. Service of legal papers on patient in state mental health facility; duties of director of facility.

Currentness

The director of a state mental health facility must not accept service of legal papers, or consent to the appointment of a guardian ad litem, for any patient. When a legal paper is served on a patient in a facility, a copy of the legal paper must be filed with the director who shall cause it to be made a part of the permanent record of the patient. The director immediately, in writing, shall inform the court, out of which the process issued, of the date of service of the process, the procedure under which the patient was admitted to the facility, and the present mental and physical condition of the person.

Credits

HISTORY: 1962 Code § 10-437; 1952 Code § 10-437; 1942 Code § 6240; 1932 Code § 6240; Civ. C. '22 § 5101; 1920 (31) 704; 1952 (47) 2042; 2008 Act No. 266, § 1, eff June 4, 2008.

Code 1976 § 15-9-510, SC ST § 15-9-510
Current through the 2024 Session of the General Assembly, subject to final approval by the Legislative Council, technical revisions by the Code Commissioner, and publication in the Official Code of Laws.

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STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

Discover Fresh Foods, Inc.)
Plaintiff,)
vs.)
Jesvi Concepcion)
Defendant.)

IN THE COURT OF COMMON PLEAS
13TH JUDICIAL CIRCUIT

CASE NO.: 2022 -CP- 23 - 0040

MOTION AND ORDER INFORMATION FORM AND COVERSHEET

'25 APR 1 PM12:08 JA
JAY GRESHAM COC GVL SC

Plaintiff's Attorney:	Defendant's Attorney:
Sarah A. Timmons, Bar No. 100007	Pro Se, Bar No
Address: 25 Delano Drive Suite E	Address:
Phone: 6149060289 Fax	Phone: Fax
E-mail: Other:	E-mail: Other:

☐ **MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)**
☐ **FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)**
☐ **PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)**

SECTION I: Hearing Information

Nature of Motion: GAL and Stay Default Judgment
Estimated Time Needed: Court Reporter Needed: ☐ YES/☐ NO

SECTION II: Motion/Order Type

☑ Written motion attached
☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☐ Plaintiff/☐ Defendant Date submitted 3/18, 20 25

SECTION III: Motion Fee

☑ PAID – AMOUNT: $ 25.00
☐ EXEMPT: (check reason)
- ☐ Rule to Show Cause in Child or Spousal Support
- ☐ Domestic Abuse or Abuse and Neglect
- ☐ Indigent Status ☐ State Agency v. Indigent Party
- ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
- ☐ Motion for Stay in Bankruptcy
- ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
- ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions
  Name of Court Reporter:
- ☐ Other:

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.
☐ Other:

JUDGE CODE
Date: , 20

CLERK'S VERIFICATION

Collected by: JA Date Filed: April 1st, 2025

☐ MOTION FEE COLLECTED: $ 25.00
☐ CONTESTED – AMOUNT DUE: $

SCCA 233 (11/2003)

APPENDIX A-9

Order/Form 4 directing hearing on Mr. Concepcion's Motion to Stay, filed April 21, 2025

Document label superimposed on following pages

ELECTRONICALLY FILED - 2025 Apr 21 9:22 AM - GREENVILLE - COMMON PLEAS - CASE#2022CP2300240

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2022CP2300240

DiscoverFresh Foods Inc
PLAINTIFF(S)

Jesus Concepcion 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:

This matter comes before the Court upon the Motion to Stay Default Judgment filed by Defendant Jesus Concepcion. From review of the record, it appears that a Default Judgment was issued on October 2, 2024. The Order for Default Judgment did not address Defendant Concepcion's Motion to Stay filed before the October 2, 2024 Order in which he raised issues of service and other grounds for relief. Further, it does not appear that a hearing was held with proper notice to this defendant who had made an appearance. Therefore, the Court directs that a hearing be scheduled to address Mr. Concepcion's Motion. Mr. Concepcion may appear by way of WebEx since he is currently incarcerated. It is so Ordered.

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 04/18/2025 .

Kendry Solange Feliz
Kendry S Tavarez
National Risk Solutions LLC
Jesus Concepcion for Jesus Concepcion
Jesus Concepcion for Jesus Concepcion

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

ELECTRONICALLY FILED - 2025 Apr 21 9:22 AM - GREENVILLE - COMMON PLEAS - CASE#2022CP2300240

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.

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Greenville Common Pleas

Case Caption: DiscoverFresh Foods Inc , plaintiff, et al vs. Jesus Concepcion , defendant, et al

Case Number: 2022CP2300240

Type: Order/Electronic Form 4

So Ordered

Hon Perry H. Gravely, Chief Administrative Judge-Civil

Electronically signed on 2025-04-18 13:10:15 page 3 of 3

APPENDIX A-10

Plaintiff's Response in Opposition, filed July 15, 2025

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ELECTRONICALLY FILED - 2025 Jul 15 6:36 PM - GREENVILLE - COMMON PLEAS - CASE#2022CP2300240

STATE OF SOUTH CAROLINA) COUNTY OF GREENVILLE))	IN THE COURT OF COMMON PLEAS FOR THE THIRTEENTH JUDICIAL CIRCUIT
DiscoverFresh Foods, Inc.,))	Civil Action No. 2022-CP-23-00240
Plaintiff,))	**PLAINTIFF'S RESPONSE IN OPPOSITION TO DEFENDANT JESUS CONCEPCION'S MOTIONS TO STAY/VACATE DEFAULT JUDGMENT & MOTION TO STAY/ APPOINT GUARDIAN AD LITEM**
vs.))	
Jesus Concepcion, Kendry S. Tavarez a.k.a Kendry Solange Feliz, and National Risk Solutions, LLC,))	
Defendants.)	

COMES NOW Plaintiff DiscoverFresh Foods, Inc. ("Plaintiff" or "DiscoverFresh"), by and through the undersigned counsel, and responds to Defendant Jesus Concepcion ("Concepcion")'s Motion to Stay and Vacate Default Judgment filed February 11, 2025, and Motion to Stay & Appoint Guardian ad Litem filed April 1, 2025 (collectively the "Motions"), as follows:

Background History

1. DiscoverFresh employed Defendant Jesus Concepcion from early 2018 until August 2021. During that time, the Defendants engaged in a conspiracy of fraud to embezzle over Six Million Five Hundred Thousand Ninety Thousand Two Hundred Four Dollars and Twenty-Six Cents ($6,590,204.26) of DiscoverFresh's company funds.

2. The Defendants' embezzlement scheme against DiscoverFresh involved three methods of stealing company funds: (i) fraudulently authorizing, directing and overseeing payments to NRS, a company owned by Defendant Jesus Concepcion's wife - Defendant Tavarez, for recruitment and background check services that were never performed; (ii) paying payroll checks to "phantom" employees who never worked at DiscoverFresh; and (iii) making unauthorized increases in salaries and bonuses to various employees, including himself and "phantom" employees.

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Procedural History

3. On January 18, 2022, DiscoverFresh filed a Complaint against Defendant asserting claims of fraud, breach of fiduciary duty, civil conspiracy, unjust enrichment, negligence, violations of the SC Unfair Trade Practices Act, conversion, and trespass to chattels.

4. Defendant Jesus Concepcion has been incarcerated since 2021 on criminal charges unrelated to this case. He was personally served with the Summons, Complaint, Order, Lis Pendens, Motion for TRO & Attachment, and Motion for Emergency Temporary Injunction by Deputy Sheriff R. Garcia of the City and State of New York, at the Metropolitan Detention Center in Brooklyn, NY ("MDC Brooklyn") on March 9, 2022. A Certificate of Service was filed on March 29, 2022. **(SEE EXHIBIT 1).**

5. Defendant Concepcion's answer or other responsive pleading was due on April 8, 2022. No answer or responsive pleading was timely filed.

6. On October 19, 2022, Plaintiff filed a Motion for Entry of Default against Defendant Jesus Concepcion.

7. An Order for Entry of Default against Defendant Jesus Concepcion was issued on October 25, 2022. Defendant acknowledged being served with a copy of this order in his letter to the Court filed on December 21, 2023. **(SEE EXHIBIT 2)**

8. Plaintiff filed a separate Motion for Entry of Default against Defendants Kendry S. Tavarez a.k.a. Kendry Solange Feliz ("Defendant Tavarez") and National Risk Solutions, LLC ("Defendant NRS") on October 19, 2022, which was also granted on October 25, 2022.

9. On February 9, 2023, DiscoverFresh filed a Motion for Default Judgment for a sum certain amount of $6,590,204.26 against Defendant Jesus Concepcion pursuant to SCRCP 55(b)(1). An Amended Affidavit of Damages correcting a scrivener's error was filed on February

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13, 2023. The court declined to sign the proposed order on this motion on February 14, 2023, pending resolution of claims against Defendant Mahon.

10. Mr. Concepcion was personally served with the Motion for Entry of Default, Order for Entry of Default, Amended Affidavit of Damages, and Motion for Default Judgment by Deputy Sheriff D. Prophete of the City and State of New York, at the Metropolitan Detention Center in Brooklyn, NY ("MDC Brooklyn") on April 24, 2023. **(SEE EXHIBIT 3).**

11. On October 23, 2023, Defendant Jesus Concepcion filed a *pro se* Motion to Stay this action. No hearing was requested and no order was entered on this motion.

12. On December 21, 2023, Defendant Jesus Concepcion mailed a letter to the Clerk of Court essentially making a "notice of *pro se* appearance" in this action. The letter acknowledges he was notified of the Order for Entry of Default and intended the Motion to Stay filed on October 23, 2023 to also serve as a Motion to Set Aside Entry of Default.

13. The Plaintiff's claims against Defendant Mahon, the only defendant to appear in the action, were resolved and a Stipulation of Dismissal of Defendant Mahon was filed on August 30, 2024.

14. On September 19, 2024, Plaintiff filed a renewed Motion for Default Judgment for the sum certain amount of $6,523,537.64 against Defendant Jesus Concepcion, Kendry S. Tavarez, and National Risk Solutions, LLC pursuant to SCRCP 55(b)(1), as Plaintiff's claims against Defendant Mahon had been resolved.

15. An Order for Final Default Judgment was issued on October 2, 2024.[1]

16. Transcript of the judgment was entered on October 21, 2024.

[1] Defendant Concepcion was transferred from federal prison in New York to the Spartanburg County Detention Center on October 11, 2024. He remains incarcerated at the SCDC.

ELECTRONICALLY FILED - 2025 Jul 15 6:36 PM - GREENVILLE - COMMON PLEAS - CASE#2022CP2300240

17. An Execution Against Property to the Greenville County Sheriff was filed on October 28, 2024.

18. Nulla Bonas as to all three Defendants were filed on March 12, 2025.

19. On January 22, 2025, Defendant Jesus Concepcion mailed a letter to the clerk of Court acknowledging he had been served with the Order for Final Default Judgment and again requesting a stay/the entry default be set aside. No motion cover sheet was included nor was a motion filing fee paid.

20. On February 11, 2025, the Defendant Concepcion filed a *pro se* Emergency Motion to Stay and Motion to Vacate Default Judgment. Defendant Concepcion's Motion purports to be on behalf of Defendants Concepcion, Tavarez, and NRS.

21. Defendant Concepcion is *pro se* and is not an attorney and does not have any standing or ability to file a motion on behalf of Defendants Tavarez and NRS.

22. On April 1, 2025, Defendant Jesus Concepcion filed a Motion for Appointment of Guardian ad Litem & Renewed Motion to Stay in this matter.

STANDARD OF REVIEW

A. Rule 55(c) of the South Carolina Rules of Civil Procedure

Pursuant to Rule 55(c) of the South Carolina Rules of Civil Procedure ("SCRCP"), the Court may set aside an entry of default and, if a judgment by default has been entered, may likewise set it aside in accordance with Rule 60(b), SCRCP. Because judgment by default was entered in this case on October 25, 2022 (over two (2) years ago), the far more rigorous standard of review for granting relief under Rule 60, SCRCP applies.

Whether an entry of default may be set aside is within the sole discretion of the Circuit Court and will not be set aside absent a clear showing of abuse of discretion. *See* Richardson v.

ELECTRONICALLY FILED - 2025 Jul 15 6:36 PM - GREENVILLE - COMMON PLEAS - CASE#2022CP2300240

P.V., Inc., 383 S.C. 610, 682 S.E.2d 263 (2009) (citing Harbor Island Owners' Ass'n v. Preferred Island Props., Inc., 369 S.C. 540, 544, 633 S.E.2d 497, 499 (2006)).

A party is required to provide an explanation for the default and give reasons why vacation of the default entry would serve the interests of justice. *See* Campbell v. City of N. Chas.,431 S.C. 454, 848 S.E.2d 788 (Ct. App. 2020). Once a party has put forth a satisfactory explanation for the default, the trial court must also consider the following factors: (i) the timing of the defendant's motion for relief, (2) whether the defendant has a meritorious defense, and (3) the degree of prejudice to the plaintiff if relief is granted. *See* Id; Wham v. Shearson Lehman Bros., 298 S.C. 462,465, 381 S.E.2d 499, 502 (Ct. App. 1989)

B. SCRCP Rule 60(b)

Pursuant to SCRCP Rule 60(b), on motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons:

(1) mistake, inadvertence, surprise, or excusable neglect;

(2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b);

(3) fraud, misrepresentation, or other misconduct of an adverse party;

(4) the judgment is void;

(5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application.

ELECTRONICALLY FILED - 2025 Jul 15 6:36 PM - GREENVILLE - COMMON PLEAS - CASE#2022CP2300240

A motion pursuant to Rule 60(b) SCRCP shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the judgment, order or proceeding was entered or taken.

C. SCRCP 7(b)(1)

South Carolina Rule of Civil Procedure 7(b)(1) requires that motions "shall state with particularity the grounds therefor, and shall set forth the relief or order sought." By requiring notice to the court and the opposing party of the basis for the motion, the Rule advances the policies of reducing prejudice to either party and assuring that the court can comprehend the basis of the motion and deal with it fairly. See Camp v. Camp, 386 S.C. 571, 575, 689 S.E.2d 634, 636 (2010). Therefore, when a motion is challenged for a lack of particularity, the court should determine whether a party is prejudiced by a lack of particularity or whether the court can comprehend the basis for the motion and deal with it fairly. Id.

ARGUMENT

A. Defendant Concepcion's motion for relief is untimely.

Defendant Concepcion was personally served with the Order for Entry of Default, Amended Affidavit of Damages, and Motion for Default Judgment on April 24, 2023, while incarcerated in federal prison in New York. He sought legal advice as to how to proceed from his pro bono criminal attorney as evidenced by the letters sent to the Clerk of Court on October 19, 2023. He has given no explanation for the (6) month delay in seeking the advice of his lawyer and/or requesting relief from the entry of default.

Mr. Concepcion filed a Motion to Stay on October 23, 2023. The motion did not request the entry of default be vacated, only that the proceedings "*be stayed pending disposition of the underlying criminal prosecution, as the issues discussed in both are identical*".

ELECTRONICALLY FILED - 2025 Jul 15 6:36 PM - GREENVILLE - COMMON PLEAS - CASE#2022CP2300240

The Defendant Concepcion waited 660 days after being personally served with the Order for Entry of Default and Motion for Default Judgment to file a Motion to Vacate. The exhibits to the Defendant's Motion to Vacate filed on February 11, 2025, include a "Letter Motion to Vacate Default Judgment" dated August 23, 2023 (this does not appear to have been received by the Clerk of Court and is not part of the case filings). This letter confirms that Defendant was aware that no responsive pleadings were filed by the attorney he had hired and that entry of default had occurred. He has given no explanation for the untimely delay and failure to file responsive pleadings or a motion for relief.

B. Defendant Concepcion has not provided any evidence of a defense to the Plaintiff's claims.

The showing of a meritorious defense must be made with evidence. *See Sundown, supra,* (noting need for the court to find "evidentiary support" on the record). When the party has failed to offer any factual material supporting a meritorious defense to the claims, they have failed to satisfy this *Wham* factor. *Id*. The Defendant has failed to present any evidence whatsoever of a meritorious defense to the claims asserted in the Complaint. The mere fact that he allegedly retained an attorney who failed to timely file an answer is not a basis for lifting entry of default that was entered over two (2) years ago.

"[B]y suffering a default, the defaulting party is deemed to have admitted the truth of the plaintiff's allegations and to have conceded liability." *Limehouse v. Hulsey*, 404 S.C. 93, 116, 744 S.E.2d 566, 578-79 (2013) (quoting *Roche v. Young Bros., Inc., of Florence*, 332 S.C. 75, 81, 504 S.E.2d 311, 314 (1998)).

C. Plaintiff will be severely harmed and prejudiced if the default judgment is vacated.

For this Court to vacate the Entry of Default and Order for Final Default Judgment would result in prejudice to the Plaintiff. Plaintiff served the Summons & Complaint in accordance with the

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Rules as well as served notice of the entry of default and order for default judgment in accordance with the Rules. Defendant Concepcion admits to having had notice of the filing of the Complaint since being served on March 9, 2022, and admits to having notice of the entry of default since at least August 2023. Plaintiff has incurred substantial attorneys' fees and costs in bringing this action, litigating this case, and defending against the Defendant Concepcion's motions. Defendant Concepcion's motions to vacate fail to assert any argument to support his Motions sufficient to lift default and has failed to assert any argument that the Plaintiff will not be prejudiced by setting aside the default judgment against Defendant Concepcion.

In the case of *Richardson v. P.V., Inc*., the South Carolina Supreme Court denied a motion to set aside an entry of default when appellants filed the motion to set aside two months after the entry of default, failed to assert a meritorious defense, and failed to argue that the plaintiff would not be prejudiced if the entry of default was lifted. 383 S.C. 610, 619, 682 S.E.sd 263, 267 (2009).

D. <u>Defendant's Motions to Stay/Appoint a Guardian ad Litem fail to provide adequate grounds for the motions and the relief requested therein.</u>

The grounds for Defendant Concepcion's motion for appointment of a guardian ad litem pursuant to SCRCP 17(c) is to "help him navigate through the civil matter." He is not a minor nor is he legally incompetent. Rather, Defendant Concepcion has asserted to the Court in his filings and communications that he feels competent to defend himself in this action. His request is untimely as it was not made prior to entry of default or final default judgment being entered, thus it must be denied.

In the event the Court were to vacate the default judgment, the Defendant Concepcion is currently incarcerated within the state of South Carolina, thus it is in the Court's discretion to appoint a GAL <u>to appear in his place at trial in accordance with SCRCP 43(a)</u>. Defendant Concepcion was sentenced to thirty (30) years in prison in September 2024 for his unrelated federal

ELECTRONICALLY FILED - 2025 Jul 15 6:36 PM - GREENVILLE - COMMON PLEAS - CASE#2022CP2300240

charges after pleading guilty, so he will not be getting out of prison for decades. Notably, Defendant is currently acting as a *pro se* Plaintiff in a federal civil case filed against the attorneys hired to represent him in this action. He has not requested a GAL be appointed in that action *(Jesus Concepcion v. John M. Mussetto and Kenneth Colon*, US District Court for South Carolina, Case No. 6:2025cv01532). To the extent this Court deems it necessary to appoint Defendant Concepcion a GAL, he should bear those expenses and Plaintiff should not be required to incur any of those expenses as they arise from the fact that he is in prison and not from any conduct of Plaintiff.

Likewise, Defendant Concepcion fails to provide any grounds whatsoever for his Motion to Stay beyond "the issues are the same in the pending criminal case." His motion was untimely as it was not made prior to entry of default or final default judgment being entered. If default judgment is vacated, this action has been pending since 2022. Granting an indefinite stay would unfairly delay the Plaintiff's right to trial and to obtain the justice Plaintiff is entitled to in this case.

CONCLUSION

The *Wham* factors do not support vacating the entry of default or the order for final default judgment because: 1) Defendant Concepcion's motion for relief was untimely as it was not filed for 660 days; 2) Defendant Concepcion has failed to show a meritorious defense; and 3) Defendant Concepcion has failed to argue that Plaintiff will not be prejudiced by granting his motion.

Further, Defendant Concepcion has failed to state adequate grounds to grant his motion for appointment of a guardian ad litem or his motion(s) to stay.

THEREFORE, the Plaintiff asks this Court to deny the Defendant's motions and allow the Plaintiff to begin supplemental proceedings to enforce the default judgment.

ELECTRONICALLY FILED - 2025 Jul 15 6:36 PM - GREENVILLE - COMMON PLEAS - CASE#2022CP2300240

Respectfully submitted,

TIMMONS BROGDON LAW FIRM, LLC

s/ Sarah Timmons

Sarah Timmons (SC Bar #100007)
25 Delano Drive, Suite E
Greenville, South Carolina 29601
PH: (864) 906-0289
sarah@timmonsbrogdon.com
Attorney for Plaintiff DiscoverFresh Foods, Inc.

July 15, 2025
Greenville, South Carolina

APPENDIX A-11

Motion to Set Aside Default Judgment, Final Judgment, and Dismiss Plaintiff's Claim with Prejudice, filed August 27, 2025

Document label superimposed on following pages

STATE OF SOUTH CAROLINA)
COUNTY OF Greenville)
Discover Fresh Foods, Inc., Plaintiff,)
vs.)
Tesis Concepcion Defendant.)

IN THE COURT OF COMMON PLEAS
13 JUDICIAL CIRCUIT
CASE NO.: 2022 -CP- 23 - 0840

MOTION AND ORDER INFORMATION FORM AND COVERSHEET

'25 AUG 27 AM 9:30
JAY GRESHAM CDC GVL SC

Plaintiff's Attorney:	Defendant's ~~Attorney:~~
Sarah Timmons, Bar No. 100007	Pro Se, Bar No
Address: 25 Delaware Drive Suite E 29601	Address:
Phone: Fax	Phone: Fax
E-mail: sarah@thetimmonsfirm.com Other:	E-mail: Other:

☑ **MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)**
☐ **FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)**
☐ **PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)**

SECTION I: Hearing Information

Nature of Motion: Set Aside Judgment, Dismiss Default Judgment & Dismiss Final Judgment
Estimated Time Needed: Court Reporter Needed: ☑ YES/☐ NO

SECTION II: Motion/Order Type

☑ Written motion attached
☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Tesis Concepcion 8/22, 2025
Signature of Attorney for ☐ Plaintiff / ☑ Defendant Date submitted

SECTION III: Motion Fee

☑ PAID – AMOUNT: $ 25.00
☐ EXEMPT: (check reason)
- ☐ Rule to Show Cause in Child or Spousal Support
- ☐ Domestic Abuse or Abuse and Neglect
- ☐ Indigent Status ☐ State Agency v. Indigent Party
- ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
- ☐ Motion for Stay in Bankruptcy
- ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
- ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions
  Name of Court Reporter:
- ☐ Other:

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.
☐ Other:

JUDGE CODE
Date: , 20

CLERK'S VERIFICATION

Collected by: JA Date Filed: Aug. 27, 2025

☑ MOTION FEE COLLECTED: $ 25.00
☐ CONTESTED – AMOUNT DUE: $

SCCA 233 (11/2003)

IN THE COURT OF COMMON PLEAS

THIRTEENTH JUDICIAL CIRCUIT

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Civil Action No. 2022-CP-23-00240

DiscoverFresh Foods, Inc.,

Andrew T. Smart

Plaintiff,

vs.

Jesús Concepción, Kendry S. Tavarez, a.k.a.

Kendry Solange Feliz, and National Risk Solutions, LLC,

Defendants,

'25 AUG 27 AM9:31
JAY GRESHAM COC GVL SC

Motion: Set-Aside Default Judgment, Final Judgment, and Dismiss Plaintiff's Claim with Prejudice

This matter comes before the Court on Defendant Concepción's Motion to Set-Aside Default Judgment, Final Jugment, and Dismiss Plaintiff's Claims with Prejudice due to the Plaintiff's Intrinsic Fraud by Perjury, False Affidavits, and Extrinsic Fraud Upon the Court. Defendant Concepción is respectfully asking the Court to Sanction the Plaintiff and his Officers for their continued prosecution of the lawsuit with the knowledge that the Claim is not grounded in fact.

1. August 8, 2021: Defendant Concepción was detained on an unrelated criminal matter.

2. August 13, 2021: Greenville County Sheriff's Office issued and served a search warrant on Defendant Concepción due to Plaintiff's allegation of embezzlement.

3. September 9, 2021: Defendant Concepción made his first court appearance at the SDNY on the unrelated criminal matter and was granted bail.

4. September 27, 2021: Greenville County Sheriff's Office issued an arrest warrant on Defendant Concepción for Breach of Trust due to Plaintiff's allegation.

5. September 27, 2021: The AUSA of the SDNY submitted an application requesting the Court to revoke Defendant Concepción's bail on the unrelated criminal matter, due to Plaintiff's allegation.

6. October 4, 2021: The Court at the SDNY revoked Defendant Concepción's bail due to Plaintiff's allegation.

7. January 18, 2022: DiscoverFresh filed a Verified Complaint with Plaintiff's sworn Affidavit and Expert Forensic Accountant, Mr. Mike O'Shea's, sworn Affidavit, in support of the Verified Complaint. The Plaintiff alleges Defendant's embezzlement scheme involved three methods of stealing company funds: (i) fraudulently authorizing, directing, and overseeing payments to National Risk Solutions, LLC, (ii) paying payroll checks to "phantom" employees who never worked at DiscoverFresh, and (iii) making unauthorized increases in salaries and bonuses to various employees including himself and "phantom" employees from March of 2018 until August of 2021.

8. March 9, 2022: Defendant Concepción was served with the Summons and Complaint.

9. March 17, 2022: Defendants Concepción, Tavarez, and NRS LLC. (collectively) retained attorneys, Mr. Mussetto and Mr. Colón, to represent them and respond to the Complaint.

10. March 18, 2022: Mr. Colón, via a text message, confirmed a response was sent to the Court.

11. April, 8, 2022: Defendant Concepción's responsive pleading was due.

12. October 19, 2022: Plaintiff filed a Motion for Entry of Default against Defendant Concepción.

13. October 25, 2022: Entry of Default Judgment was issued against Defendants Concepción, Tavarez, and NRS (collectively). No Rule 54 (b) Order was issued.

14. February 9, 2023: Plaintiff filed a Motion for Default Judgment for sum certain amount of $6,590,204.26.

15. February 13, 2023: Plaintiff filed an Amended Affidavit of Damages correcting a scrivener error.

16. February 14, 2023: The court declined to sign the proposed order pending resolution of claim against Defendant Mahon.

17. April 24, 2023: Defendant Concepción was served with Amended Affidavit of Damages, and Motion for Default Judgment.

18. April 27, 2023: Defendants Concepción and Tavarez, on a prison recorded call, conferenced with attorneys Colón and Mussetto. Mussetto for the first time admits he never sent a response; I was informed through Kevin O'Conner, a New York attorney who spoke with Mussetto at a later date that Mussetto also had side communications with the Plaintiff's attorney almost immediately after being hired. Immediately after those conversations, Mr. Mussetto went dark. He would not respond to our calls. This was very concerning given the Plaintiff's propensity to corrupt officers conduct.

19. October 23, 2023: Defendant Concepción filed pro se Motion to STAY action.

20. December 21, 2023: Defendant Concepción sent a correspondence to the Clerk of Court regarding the STAY sent on October 23, 2023, and asking to Set Aside the Entry of Default.

21. July 29, 2024: Plaintiff Andrew T. Smart, gave a sworn deposition testimony in which he essentially admitted to the following:

A. Page 185: authorizing, directing Defendant Concepción, and overseeing the use of method number ii, "phantom" employees.

B. Page 185: authorizing, directing Defendant Concepción, and overseeing Defendant Tavarez as a "phantom" employee for the sole purpose of financially supporting the Plaintiff's girlfriend, Clemson student (female number three), for over two years.

C. Pages 188, 206, 207: authorizing, directing Defendant Concepción, and overseeing paying the Clemson student (Female number three), $200,000.00 in cash.

D. Page 189: not considering authorizing, directing Defendant Concepción, and overseeing employing method number ii "phantom" employees to pay the Clemson student as dishonest.

E. Pages 271, 272: Plaintiff was questioned on a $300,000.00 cash house purchase the Clemson student made. He denied knowing anything about it, but he may have forgotten he toasted to her purchase the day she closed on the property at a strip club in Greenville.

F. Pages 340, 341: Plaintiff was challenged when asked why he tampered with evidence when he tried to have an employee remove names from the "phantom" employees list, he did not deny the claim.

G. Page 153: authorizing, directing Defendant Concepción, and overseeing financially supporting Magan B. (female number seven).

H. Pages 153, 180, 295: submitting legitimate credit card charges as fraudulent charges and categorizing personal charges as business expenses, then taking those same charges and submitting them as fraudulent.

I. Pages 285-293: Destroying evidence by erasing all his text messages with Defendant Concepción shortly after he made the allegations, he also erased his text messages with all the people he was authorizing, directing Defendant Concepción, and overseeing the use of his dubious business practices to financially support or pay for sex, favors or services.

J. Page 269-270: admitting to not disclosing A,B,C,D,E,F,G,H, and I to his Expert Forensic Accountant, who the Plaintiff and his attorneys heavily relied on to support Andrew T. Smart's Claim by submitting an Affidavit to the Court and reports to the bank, essentially misleading the Court, the authorities, the bank and insurance company.

THE PLAINTIFF COMMITTED PERJURY WHEN HE DENIED THE FOLLOWING:

K. Page 314: Plaintiff stated he did not authorize, direct Defendant Concepción, or supervise payments for C.M. (female number two) because he did not have a financial relationship with her (see previously submitted exhibit F).

L. Page 237: Plaintiff stated he never had Defendant Concepción hire a Private Investigator (see previously submitted exhibit G). Tim Grieves was hired to help with female number one, two, and three.

M. Page 137: Plaintiff stated he went to Phoenix Arizona alone and claimed the credit card charges on this trip as fraudulent. The Clemson student and I escorted the Plaintiff to Phoenix, Arizona. I made sure he entered his sex/alcohol addiction program.

N. Etc.

22. August 30, 2024: Shortly after Plaintiff gave his deposition, Claims against Defendant Mahon were resolved and a Stipulation of Dismissal was filed. Plaintiff was smart enough to know he could not go to trial after what he disclosed in his deposition.

23. September 19, 2024: Plaintiff filed renewed Motion for Default Judgment for the sum certain amount of $6,523,537.64 against Defendants Concepción, Tavarez, and NRS (collectively).

24. October 2, 2024: Final Default Judgment was issued.

25. October 11, 2024: Defendant Concepción arrived at the SCDC (I don't recall ever receiving the Final Order from the Plaintiff).

26. October 21, 2024: Transcript of Judgment was entered.

27. October 28, 2024: An Execution Against Property to the Greenville County Sheriff's Office was filed.

28. January 22, 2025: Three months after Final Judgment was issued, Defendant Concepción sent a correspondence to the Clerk of Court, again requesting for a STAY and to Set Aside the Entry of Default.

29. February 11, 2025: Four months after Final Judgment was issued, Defendant Concepción filed a pro se Emergency Motion to Stay the Judgement and Motion to Vacate Default Judgment.

30. March 12, 2025: Nulla Bona on Defendants Concepción, Tavarez, NRS (collectively) were filed.

31. April 1, 2025: Defendant Concepción filed Motion for Appointment of GAL & Renewed Motion to STAY.

STANDARD OF REVIEW

Rule 60(b) Rule 54(b)

ARGUMENT

Defendant Concepción Claims on the Intrinsic and Extrinsic Fraud are both timely and valid reasons why the Court should Sanction the Plaintiff by Setting aside the Default Judgment, Final Judgment, Dismissing the Plaintiff's Claims with Prejudice, and ruling in favor of Defendant Concepción's request for back pay and allow Concepción present Counterclaims and Third party claims against DiscoverFresh Foods Inc., Andrew T. Smart, and Julie B. Smart.

In the instant case, Plaintiff Andrew T. Smart gave a testimony deposition on July 29, 2024, Thirty (30) months after the Judgment by Default was entered against Defendants Concepción, Tavarez, and NRS (collectively), when his misconduct and deception was exposed. I understand a Judgment by Default is ordinarily Final and subject to Rule 60(b) at the time of its entry (October 25, 2022).

But, a Judgment by Default, rendered in advance against one or several defendants, is interlocutory, until final disposition is made as to all the defendants, hence why I believe the Court did not sign the proposed Amended Affidavit of Damages on February 14, 2023 and why there is no Order for Rule 54 (b) when the Default Judgment was entered on October 25, 2022. With respect to this adjudication, tolling should not be an issue, the result being the Judgment remained interlocutory until Defendant Mahon's was resolved, which it was with a Stipulation of Dismissal on August 30, 2024. The finish line was essentially pushed from Entry of Default Jugment, October 25, 2022 to Final Judgment on October 2, 2024.

I ask the Court to also consider the following:

I was detained in a federal facility in the State of NY after my bail was denied on a unrelated criminal matter, October 4, 2021 due to the Plaintiff's false allegations.

I was never informed or afforded information on being assigned a GAL due to being an out of state prisoner at the time. The Court and the Plaintiff were aware I was detained. Rule 17(d)4, 6 and 7, S.C. Provision Code 15-5-370 was never considered.

Defendants Concepción, Tavarez, and NRS (collectively) hired attorneys before the responsive pleadings were due (Colón and Mussetto never sent a response, while letting us believe they did).

After not getting any written confirmation from the attorneys we hired regarding the response, I started sending letters and Motions to the Court directly (No ruling on the Motions to Stay, Set aside, Vacate).

Respectfully see exhibits previously submitted (A,B,C,D,E). I was deprived of participation in my defense by my attorneys not responding, the lack of response to my letters, and the absence of hearings and rulings on my motions. The Plaintiff's attorneys were obviously

aware I was detained out of state at the time, they made reference to Rule 17(c) on page eight, letter D., in their Response in Opposition dated July 25, 2025, and focused on the fact that "he is not a minor nor is he legally incompetent". They did the same back in October 19, 2022, in their Affidavit in support for Entry of Default, page 2, line 9. Respectfully, their argument on why I should not be afforded a GAL rings hollow and misses the mark, because the rationale for appointing a GAL for prisoners is not the mental deficiency, but the physical restraint of imprisonment. The Plaintiff should have addressed it when they filed their Motion for Entry for Default against Defendant Concepción while Defendant Concepción was incarcerated out of State. The Plaintiff's edited version only mentions not being a minor or legally incompetent. I understand pointing out the complete Provison seriously weakens their argument, but I am sure it must have been an unintentional oversight. The language is there, and is crystal clear. Currently being in state, it has been difficult to appear on this matter. Being a federal inmate requires a WRIT from a federal judge to even appear on WebEx, hence the delay in my appearance causing further delays on this matter..

PLAINTIFF'S INTRINSIC FRAUD:

The Plaintiff waited 30 months after the Entry of Default was issued, October of 2022, to start confessing, essentially delaying the opportunity to expose his scheme, discover evidence and request for relief. His admitted involvement of authorizing, directing, and overseeing the very acts (methods) employed, is essentially admitting he falsely accused Defendents Concepción, Tavarez and NRS (collectively). His admitted nondisclosure to his Expert Forensic Accountant, was so he could include Mr. O'Shea in his scheme to corrupt the Court process. He knowingly submitted a false Claim and false Sworn Affidavits.(Please see previously sent exhibit H. If the Plaintiff is capable of having influence on and corrupting the Office of Chief Deputy as you can see in plain text, it should be considered probative evidence of what the Plaintiff thinks of the law and the Court).

The Plaintiff committed perjury during this deposition with the purpose of hiding his culpability, leadership role, the amounts paid and who was paid, but at the same time inflating loss amounts by claiming legitimate credit card charges as fraud and denying having knowledge of salary increases and the practice of "phantom" employees when he used it with his babysitters, his mother, his children, personal drivers, Defendant Tavarez, and my mother-in-law. He calls it "living through the company." He concealed his leadership role in the methods his expert claimed were used by the Defendants to embezzle.

PLAINTIFF'S EXTRINSIC FRAUD:

In this same deposition the Plaintiff admitted he disclosed paying the Clemson student to a federal agent investigating the related criminal matter. Not because he wanted to be honest, but because they discovered her during their investigation. This happened long before his deposition. This leads me to conclude that Mr. Smart's attorneys were aware, by the time he was being deposed on July 29, 2024, of his deception on their own expert, bank, insurance company, and the Court by submitting a false Claim, sham Affidavits and reports. (Please note that the existence and use of method # ii predated Defendant Concepción working at the company. Plaintiff's mother, babysitters, Charles D, etc., were already on the "phantom" employee payroll).

CONCLUSION

Andrew T. Smart's testimony is fatal to his Claim. As the Courts have noted, the deposition became a "take home examination", in which he and his proctors cheated, failed miserably and were caught. Shortly after this deposition, his attorneys did the right thing and Dismissed their Claim against Defendant Mahon, but then continued their Extrinsic fraud. Knowing the Claim was groundless and baseless, predicated on untruthful, outrageous, scandalous, and slanderous allegations, they ignored their ethical obligation as Officers of the Court and submitted a renewed Motion for Default Judgment for the sum certain amount of $6,523,537.64, two months after their client's July 29, 2024 deposition, committing Fraud Upon the Court.

SUMMARY

The factors that support Sanctions, Setting aside the Default Judgment, Final Judgment, and the Dismissal of all Claims with Prejudice:

1) Defendant Concepción's Claims were timely when he presented his Motions for relief under Rule 60 (b), 2) Defendant Concepción presented clear and convincing evidence the Plaintiff committed perjury during his July 29, 2024 deposition, Concepción also presented evidence using the Plaintiff's own words when he admitted his role and culpability in the dubious business practices that he blamed others for, and 3) if the Court rules in Defendant Concepción's favor by granting the Motions and Sanctions, and the Plaintiff is prejudiced by the ruling, it should be considered a self-inflicted wound on the Plaintiff's part, due to the Plaintiff and his Officer's malicious acts against the Defendants.

THEREFORE, I pray the Court grants Defendant Concepción's Motions, 1) report the Plaintiff's conduct to the authorities, 2) sanction the Plaintiff by Setting Aside the Default and Final Judgment, Dismissing the Plaintiff's Claims against the remaining Defendants with prejudice, 3) be assigned a GAL, 4) rule in favor of immediate financial relief by being compensated with back pay from August 8, 2021, until present (2,000,000.00), 5) remain on payroll until the Counter Claims are ruled on, 6) award $500,000.00 for pending litigation and future litigation fees, and 7) allow Defendant Concepción to present Counter Claims and Third party Claims against DiscoverFresh Inc., Andrew T. Smart, and Julie B. Smart for multiple tort Claims.

Respectfully Submitted, August 21, 2025

Jesús Concepción

8/27/2025

Honorable Judge Gravely,

After sending multiple requests to the federal court, I was made aware by my attorney, Andrew Mackenzie, that the Clerk of Court of The Court of Common Pleas has to request the Writ for my appearance to the Honorable Judge Coggins, who is presiding over the related criminal matter. Mr. Mackenzie will be in contact with the Clerk to help facilitate the request. I apologize for the delay.

I have also respectfully submitted a formal motion requesting the Court to Set Aside, Dismiss the Default Judgment and Final Judgment with Prejudice, due to the following reasons:

*Plaintiff's Intrinsic Fraud- July 29, 2024 Testimony Deposition

Perjured deposition testimony, destroying evidence, his admissions, and for submitting false affidavits.

* Plaintiff's Extrinsic Fraud upon the Court- September 19, 2024

After the Plaintiff's disclosures and admissions in his July 29, 2024 deposition, his attorneys failed to advise their client to drop the civil matter due to his mendacity and fraud.

September 19, 2024, 52 days after Plaintiff's testimony deposition, Plaintiff's attorney proceeded to knowingly submit a misleading renewed motion for Default Judgment with a sum certain amount.

I respectfully believe both my Intrinsic and Extrinsic claims are timely due to the Plaintiffs late disclosure in this process. I ask the court for an emergency hearing due to the catastrophic legal and financial consequences it has caused me.

Finally, the Plaintiff has been caught misleading and giving false statements to the Court. His text messages prove his ability to corrupt the actions of a high ranking officer in the GCSO. This should be considered probative evidence on what he thinks of your Court, authorities, bank, and insurance company.

Respectfully,

Jesus Concepción

APPENDIX A-12

Plaintiff's Supplemental Memorandum in Opposition, filed September 30, 2025

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ELECTRONICALLY FILED - 2025 Sep 30 3:30 PM - GREENVILLE - COMMON PLEAS - CASE#2022CP2300240

STATE OF SOUTH CAROLINA COUNTY OF GREENVLLE	)	IN THE COURT OF COMMON PLEAS THIRTEENTH JUDICIAL CIRCUIT
DiscoverFresh Foods, Inc., Plaintiff, vs. Jesus Concepcion, Kendry S. Tavarez a.k.a. Kendry Solange Feliz, and National Risk Solutions, LLC, Defendants,	)	C.A. No. 2022-CP-23-00240 **PLAINTIFF'S SUPPLEMENTAL MEMORANDUM IN OPPOSITION TO DEFENDANT JESUS CONCEPCION'S MOTION TO STAY/VACATE DEFAULT JUDGMENT, MOTION TO STAY/APPOINT GUARDIAN AD LITEM, and MOTION TO VACATE/MOTION TO DISMISS**

COMES NOW Plaintiff DiscoverFresh Foods, Inc., by and through the undersigned counsel, pursuant to SCRCP Rule 55(c) and Rule 60, and supplements its response to Defendant Jesus Concepcion ("Defendant")'s Motion to Stay and Vacate Default Judgment filed February 11, 2025, Defendant's Motion to Stay & Appoint Guardian ad Litem filed April 1, 2025, and Defendant's Motion to Lift Default Judgment and Motion to Dismiss Plaintiff's Claims with Prejudice filed August 29, 2025 (collectively the "Motions"), as follows:

Procedural History

1. On January 18, 2022, DiscoverFresh Foods, Inc. filed a Complaint against Defendant asserting claims of fraud, breach of fiduciary duty, civil conspiracy, unjust enrichment, negligence, violations of the SC Unfair Trade Practices Act, conversion, and trespass to chattels.
2. Defendant Jesus Concepcion was personally served with the Summons, Complaint, Order, Lis Pendens, Motion for TRO & Attachment, and Motion for Emergency Temporary Injunction by Deputy Sheriff R. Garcia of the City and State of New York, at the

ELECTRONICALLY FILED - 2025 Sep 30 3:30 PM - GREENVILLE - COMMON PLEAS - CASE#2022CP2300240

Metropolitan Detention Center in Brooklyn, NY ("MDC Brooklyn") on March 9, 2022. A Certificate of Service was filed on March 29, 2022. **(*See* EXHIBIT 1- AOS).**

3. Defendant Jesus Concepcion's answer or other responsive pleading was due on April 8, 2022. No answer or responsive pleading was timely filed.
4. On October 19, 2022, Plaintiff filed a Motion for Entry of Default against Defendant Jesus Concepcion.
5. An Order for Entry of Default against Defendant Jesus Concepcion was issued on October 25, 2022. Defendant acknowledged being served with a copy of this order in his letter to the Court filed on December 21, 2023. **(*See* EXHIBIT 2- Ltr. to Court)**.
6. Plaintiff filed a separate Motion for Entry of Default against Defendants Kendry S. Tavarez a.k.a. Kendry Solange Feliz ("Defendant Tavarez") and National Risk Solutions, LLC ("Defendant NRS") on October 19, 2022, which was also granted on October 25, 2022.
7. On February 9, 2023, Plaintiff filed a Motion for Default Judgment for a sum certain amount of $6,590,204.26 against Defendant Jesus Concepcion pursuant to SCRCP55(b)(1). An Amended Affidavit of Damages correcting a scrivener's error was filed on February 13, 2023. The court declined to sign the proposed order on this motion on February 14, 2023, pending resolution of claims against Defendant Mahon
8. Defendant was personally served with the Motion for Entry of Default, Order for Entry of Default, Amended Affidavit of Damages, and Motion for Default Judgment by Deputy Sheriff D. Prophete of the City and State of New York, at the Metropolitan Detention Center in Brooklyn, NY ("MDC Brooklyn") on April 24, 2023. **(*See* EXHIBIT 3- AOS).**
9. Defendant failed to file a timely response to the Motion for Entry of Default.

ELECTRONICALLY FILED - 2025 Sep 30 3:30 PM - GREENVILLE - COMMON PLEAS - CASE#2022CP2300240

10. On October 23, 2023, Defendant filed a *pro se* Motion to Stay Judgment. No hearing was requested and no order was entered on this motion.
11. On December 21, 2023, Defendant mailed a letter to the Clerk of Court essentially making a "notice of *pro se* appearance" in this action. The letter acknowledged he was notified of the Order for Entry of Default and intended his Motion to Stay filed on October 23, 2023, to also serve as a Motion to Set Aside Entry of Default. **(*See* EXHIBIT 2).**
12. The Plaintiff's claims against Defendant Mahon, the only defendant to properly appear in the action, were resolved and a Stipulation of Dismissal of Defendant Mahon was filed on August 30, 2024.
13. On September 19, 2024, Plaintiff filed a renewed Motion for Default Judgment for the sum certain amount of $6,523,537.64 against Defendants Jesus Concepcion, Kendry S. Tavarez, and National Risk Solutions, LLC pursuant to SCRCP 55(b)(1).
14. An Order for Final Default Judgment was issued on October 2, 2024. Transcript of the judgment was entered on October 21, 2024.
15. An Execution Against Property to the Greenville County Sheriff was filed on October 28, 2024. Nulla bonas were returned as to all Defendants.
16. In January 2025, Defendant mailed a letter to the Clerk of Court acknowledging he had been served with the Order for Final Default Judgment and again requesting a stay/the entry of default be set aside. No motion cover sheet was included, a hearing was not requested, and no motion filing fee was paid. **(*See* EXHIBIT 4- Clerk Ltr. to Defendant).**
17. On February 11, 2025, Defendant Jesus Concepcion filed a *pro se* "Emergency Motion to Stay and Motion to Vacate Default Judgment". The Defendant's motion purports to be

ELECTRONICALLY FILED - 2025 Sep 30 3:30 PM - GREENVILLE - COMMON PLEAS - CASE#2022CP2300240

submitted on behalf of Defendants Concepcion, Tavarez, and National Risk Solutions, LLC.[1]

18. On April 1, 2025, Defendant filed a *pro se* Motion for Appointment of Guardian ad Litem ("GAL") & Renewed Motion to Stay in this matter.

19. Plaintiff filed a Response in Opposition to Defendant's motions to stay, vacate default judgment, and appoint a GAL on July 15, 2025.

20. A hearing was scheduled on Defendant's pending motions on July 21, 2025. Defendant was unable to appear at the hearing due to his failure to obtain an Order for Transfer of Custody of Federal Inmate from the federal court allowing him to appear virtually or in person at a state court hearing. The hearing was rescheduled for October 6, 2025.

21. On August 1, 2025, Defendant filed what is essentially a *pro se* "Memo in Support of Motion to Vacate Default Judgment, Motion to Stay, and Motion to Appoint GAL" along with ten (10) exhibits.

22. On August 19, 2025, Defendant submitted a letter of "request for Writ" to the federal court. This request did not comply with federal or state requirements for an Order of Temporary Transfer of Custody of a Federal Inmate.

23. On August 27, 2025, Defendant filed a "Motion to Set Aside Judgment and Motion to Dismiss Plaintiff's Claim with Prejudice."

24. Defendant's Motion to Stay and Vacate Default Judgment filed on February 11, 2025, Motion for Appointment of Guardian ad Litem and Stay Default Judgment filed on April

[1] Notably, Defendant Tavarez did not sign the motion, and no attorney has made an appearance on behalf of National Risk Solution. Defendant Concepcion is not an attorney and cannot represent National Risk Solutions, LLC or Defendant Tavarez.

ELECTRONICALLY FILED - 2025 Sep 30 3:30 PM - GREENVILLE - COMMON PLEAS - CASE#2022CP2300240

1, 2025, and Motion to Set Aside Default Judgment, Final Judgment and Motion to Dismiss is presently pending before this Court.

25. Plaintiff respectfully requests Defendant's Motions be denied and the Court permit Plaintiff to proceed to supplemental proceedings on its default judgment.

STATEMENT OF FACTS

26. Defendant Jesus Concepcion has been incarcerated since 2021 on federal criminal charges unrelated to this matter where he was sentenced to over thirty (30) years.

27. Defendant has represented that Defendant retained the Law Office of John M. Mussetto, LLC to represent him in this matter and paid an initial retainer fee of $5,000 on or about March 17, 2022. (*See* Exhibit A to Letter to Ct. filed Aug. 1, 2025.)

28. Defendant admits he was served with the Amended Affidavit of Damages and Motion for Entry of Default Judgment on April 24, 2023. (*See* ¶17 of Defendant's Motion to Set Aside filed Aug. 29, 2025.)

29. Defendant admits he became aware that Mr. Mussetto had not filed responsive pleadings in this action on April 27, 2023. (*See* ¶18 of Defendant's Motion to Set Aside filed Aug. 29, 2025.)

30. Defendant did not file a response to the Plaintiff's Motion for Entry of Default Judgment for over six (6) months. Defendant admits he waited until October 23, 2023, to submit a *pro se* Motion to Stay the Judgment. He did not file a Hearing Request along with the motion. (*See* ¶19 of Defendant's Motion to Set Aside filed Aug. 29, 2025.)

31. Defendant admits he did not file a formal motion and instead sent correspondence to the Greenville County Clerk of Court asking to "set aside the entry of default" on December 21, 2023. (*See* ¶20 of Defendant's Motion to Set Aside filed Aug. 29, 2025.)

ELECTRONICALLY FILED - 2025 Sep 30 3:30 PM - GREENVILLE - COMMON PLEAS - CASE#2022CP2300240

32. Defendant admits he sent additional correspondence to the Greenville County Clerk of Court after the Order for Final Default Judgment was issued once again requesting a "stay" and to "set aside the entry of default" on January 22, 2025. (*See* ¶28 of Defendant's Motion to Set Aside filed Aug. 29, 2025.)

33. Although Defendant contends he was not served with the Order for Final Default Judgment, he admits he filed a pro se "Emergency Motion to Stay and Vacate Default Judgment" based on the Order for Final Default Judgment on February 11, 2025. (*See* ¶29 of Defendant's Motion to Set Aside filed Aug. 29, 2025.)

34. Defendant's Motion to Stay & Vacate Default Judgment filed on February 11, 2025 does not provide any basis as to why he did not file a timely response to the Motion for Entry of Default and simply asks the Court to "vacate the entry of default judgment".

35. In the Defendant's Motion to Stay Default Judgment and Appoint Guardian Ad Litem filed on April 1, 2025, Defendant requests appointment of a GAL pursuant to SCRCP 17(c) due to his continued incarceration. This motion blames the failure to file a responsive pleading on the legal counsel he hired legal counsel in March 2022, but still does not address why he failed to file a *pro se* responsive pleading after learning of the discrepancy in April 2023 or failed to file a *pro se* response to the Plaintiff's Motion for Entry of Default Judgment for over 6 months after being served with it. He provides no legal basis for his request that the Court appoint a GAL to represent him after October 2024.

36. In the Defendant's "Memo in Support" filed August 1, 2025 he to cites SCRCP 17(c), S.C. Code §§ 15-5-320 and 15-5-370 in support of his motion to appoint GAL. In support of his motion to stay of default judgment and set aside the default judgment, Defendant claims

ELECTRONICALLY FILED - 2025 Sep 30 3:30 PM - GREENVILLE - COMMON PLEAS - CASE#2022CP2300240

he was unable to defend himself in this action due to being incarcerated and unable to pay for a legal defense.

37. Defendant's Motion to Set Aside Default Judgment/Final Judgment and Motion to Dismiss Plaintiff's Claim with Prejudice filed on August 29, 2025 are submitted pursuant to SCRCP 60(b) and 54(b). Defendant requests the Court "sanction the Plaintiff" by dismissing the Plaintiff's claims, awarding Defendant "back pay", awarding Defendant money to use towards litigation fees, and allowing Defendant to assert counterclaims against the Plaintiff/third-party claims against Andrew Smart and Julie Smart. Defendant seems to contend that the Court's failure to appoint a GAL to represent him has prevented him from being able to properly defend himself in this action.

STANDARD OF REVIEW

Under SCRCP 55, a default judgment may be set aside "for good cause shown" in accordance with Rule 60(b). Rule 60(b) provides limited grounds for relief, including: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence; (3) fraud, misrepresentation, or misconduct; (4) void judgment; (5) satisfaction or discharge of judgment; or (6) any other reason justifying relief. South Carolina courts consistently hold that the moving party bears the burden of showing (1) excusable neglect, (2) a meritorious defense, and (3) due diligence in seeking relief. *Mictronics, Inc. v. S.C. Dep't of Revenue*, 345 S.C. 506, 548 S.E.2d 223 (2001).

Rule 55(c) requires a party seeking relief from an entry of default to provide an explanation for the default and give reasons why vacation of the default entry would serve the interests of justice. Mere neglect, carelessness, or ignorance of the rules does not constitute excusable neglect. *Ricks v. Weinrauch*, 293 S.C. 372, 360 S.E.2d 535 (Ct. App. 1987). Once a party has put forth a satisfactory explanation for the default, the trial court must also consider: (1) the timing of the

ELECTRONICALLY FILED - 2025 Sep 30 3:30 PM - GREENVILLE - COMMON PLEAS - CASE#2022CP2300240

motion for relief; (2) whether the defendant has a meritorious defense; and (3) the degree of prejudice to the plaintiff if relief is granted. *Wham v. Shearson Lehman Bros., Inc*., 298 S.C. 462, 465, 381 S.E.2d 499, 501–02 (Ct.App.1989).

ARGUMENT

I. Defendant Cannot Show Excusable Neglect

Defendant admits to receiving the Summons & Complaint, Motion for Entry of Default, Entry of Default, and Order for Final Default Judgment, but claims "he was unable to respond because he was incarcerated." The failure to prioritize a legal obligation does not meet the high standard of excusable neglect. *Wham v. Shearson Lehman Bros., Inc.*, 298 S.C. 462, 381 S.E.2d 499 (Ct. App. 1989). Although he has not retained defense counsel in this action, Defendant has discussed this matter with several attorneys, including his criminal defense attorneys, each of whom provided accurate and useful information to him. **(*See* EXHIBIT 5- Letters from defense counsel**).

A. Defendant is not entitled to appointment of a GAL in this action.

SCRCP Rule 17 governs the appointment of a GAL for adults. A GAL must be appointed for an adult only if the person is incompetent. Based upon his submitted motions and communications with this Court, the Defendant is had access to the internet and U.S. postal mail during the entirety of litigation. He is clearly intelligent and mentally competent. He has not asked the Court for the opportunity to obtain defense counsel at any point during litigation and clearly believes that he is capable of adequate self-representation. Thus, he is not entitled to the appointment of a GAL due to incompetency and Plaintiff objects to same.

SCRCP 17 (c) 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

ELECTRONICALLY FILED - 2025 Sep 30 3:30 PM - GREENVILLE - COMMON PLEAS - CASE#2022CP2300240

to the trial to testify in accordance with Rule 43(a). Incarceration within the state does not automatically require a GAL. If the incarcerated person is of sound mind and can communicate with counsel or the court, no GAL is needed.

Despite being incarcerated out of state until he was transferred to the Spartanburg County Detention Center on October 11, 2024, Defendant's notification to the Court of his decision to proceed *pro se* on December 13, 2023, rendered the appointment of a GAL unnecessary. Further, even if a GAL had been appointed, the Entry of Default had already been entered for over a year on October 2, 2024 and the Order of Default Judgment issued on October 2, 2024, was determined without a hearing based on a sum certain amount and the Defendant's failure to file a proper responsive pleading in this action; therefore, the outcome would not have changed.

II. Defendant Failed to Act with Due Diligence

Rule 60(b) requires that the motion be made within a reasonable time. *Mictronics, Inc. v. S.C. Dep't of Revenue*, 345 S.C. 506, 548 S.E.2d 223 (2001). "[R]elief from a judgment of default should be granted where the defaulting party acts with reasonable diligence in seeking to set aside the default and tenders a meritorious defense." *United States v. Moradi*, 673 F.2d 725, 727 (4th Cir. 1982).

This case commenced on January 18, 2022. Mr. Concepcion was served with the Complaint on March 29, 2022 and the Entry of Default on April 24, 2023.

Defendant waited until October 23, 2023, approximately six (6) months after being served with the Entry of Default, before taking any action by filing his first motion in this case, a *pro se* Motion to Stay Judgment. No hearing was requested and no order was entered on this motion. Further, Mr. Concepcion waited until April 1, 2025, almost 3 years after being served with the Complaint and two years after being served with the Entry of Default, to first request a GAL.

ELECTRONICALLY FILED - 2025 Sep 30 3:30 PM - GREENVILLE - COMMON PLEAS - CASE#2022CP2300240

Mr. Concepcion offers no explanation for this delay. Such inaction demonstrates a lack of diligence; therefore, his motions should be denied.

III. Defendant Has Not Demonstrated a Meritorious Defense

Even if excusable neglect were shown, which Plaintiff denies, Defendant must also set forth facts—not mere conclusions—constituting a meritorious defense to Plaintiff's claims. Defendant offers only vague statements without affidavits or evidence, which is legally insufficient. In making a determination as to whether the defense of a defaulting party is meritorious, the defaulting party must make "a presentation or proffer of evidence, which, if believed, would permit either the Court or a jury to find for the defaulting party." *Cousar v. M&R Carriers 1, Inc*., No. CV 6:16-865-HMH, 2016 WL 3087008, at 1 (D.S.C. June 2, 2016) (citing *U.S. v. Moradi*, 673 F.2d 725, 727 (4th Cir. 1982)).

The Plaintiff's Complaint asserted causes of action against the Defendant for fraud, breach of fiduciary duty, civil conspiracy, unjust enrichment, negligence, violations of the SC Unfair Trade Practices Act, conversion, and trespass to chattels, arising from Defendant's theft of over Six Million ($6,000,000) Dollars from his employer, Plaintiff.[2] Although his communications with the Court "request the opportunity to respond", Defendant did not file an Answer or other responsive pleading in this action. Ignorance is not a defense to his failure to comply with the SCRCP.

The defenses raised by the Defendant in his "Motion to Set Aside Default Judgment/Final Judgment and Motion to Dismiss Plaintiff's Claim with Prejudice filed on 8/29/25" include: (1) an assertion that the corporate representative for Plaintiff committed perjury during his deposition

[2] Notably, Defendant entered a plea of guilty in the federal criminal case arising out of Defendant's fraud against Plaintiff on June 9, 2025. *See United States of America v. Concepcion*, Ca. No. 6:23-cr-00818-DCC. *See* Copy of Indictment and Defendant's guilty plea, **EXHIBITS 6 and 7**.)

ELECTRONICALLY FILED - 2025 Sep 30 3:30 PM - GREENVILLE - COMMON PLEAS - CASE#2022CP2300240

on July 29, 2024; (2) alleged destruction of evidence by third parties; (3) allegations of "extrinsic" and "intrinsic" fraud committed by third parties.

Defendant has not properly asserted a counter claim, nor has he sought to join parties to the action who he believes are necessary parties to this action. Even if the default judgment were set aside and he was allowed to file an Answer & Counterclaim, these claims would be barred as the events made the basis of the Plaintiff's Complaint occurred prior to 2021. There is no meritorious defense he can present.

IV. Plaintiff Will Be Prejudiced if the Judgment is Set Aside

Setting aside the judgment would unfairly prejudice Plaintiff by forcing the Plaintiff to re-litigate the entire case, which has been pending since January 18, 2022, and for which Plaintiff has already incurred significant expenses. Discovery has been conducted. Numerous depositions have been taken. Plaintiff hired a forensic accounting expert to review the Plaintiff's financial accounts and transactions. Defendant had the opportunity to participate in litigation over the past three (3) years and failed to do so personally or by proxy. Courts must consider prejudice when determining whether to grant Rule 60(b) relief. *Bowers v. Bowers*, 304 S.C. 65, 403 S.E.2d 127 (Ct. App. 1991).

CONCLUSION

The Defendant has failed to meet the strict requirements necessary to warrant relief from a properly entered judgment. The Default Judgment in this matter was duly entered after Defendant was properly served, failed to appear or answer, and provided no timely justification for his neglect. He has failed to show a meritorious defense can be presented. Plaintiff would be unfairly prejudiced by vacating the default judgment. Plaintiff respectfully requests the Court deny Defendant's Motions and allow Plaintiff to proceed with collecting judgment.

ELECTRONICALLY FILED - 2025 Sep 30 3:30 PM - GREENVILLE - COMMON PLEAS - CASE#2022CP2300240

Respectfully submitted,

TIMMONS BROGDON LAW FIRM, LLC

s/ *Sarah Timmons*
Sarah Timmons (SC Bar #100007)
25 Delano Drive, Suite E
Greenville, SC 29601
PH: (864) 906-0289
sarah@timmonsbrogdon.com

Attorney for Plaintiff DiscoverFresh Foods, Inc.

September 30, 2025
Greenville, South Carolina

APPENDIX A-13

October 6, 2025 hearing transcript

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STATE OF SOUTH CAROLINA **TRANSCRIPT OF RECORD**

COUNTY OF GREENVILLE CASE NO.:2022-CP-23-00240

TRANSCRIPTION OF DIGITAL COURTROOM PROCEEDINGS

October 6, 2025

BEFORE: The Honorable Perry H. Gravely

DISCOVER FRESH FOODS, INC.,

Plaintiff,

vs.

JESUS CONCEPCION, KENDRY S. TAVAREZ, a/k/a KENDRY SOLANGE FELIZ, and NATIONAL RISK SOLUTIONS, LLC.,

Defendants.

APPEARANCES:

Sarah A. Timmons, Esq.
Appearing for the Plaintiff.

Jesus Concepcion
Appearing Pro Se

Also present: Mr. McKenzie.
(Full name was not stated in the record.)

Recorded by: Digital Courtroom

Transcriber: Natalie Dahl, RPR
SC Official Stenographer

NOTE: ***Pursuant to Rule 607 (H)(1)(B), SCACR "A Court REPORTER SHALL RECEIVE THE FEE OF $1.00 PER PAGE FOR FURNISHING A COPY OF A PREVIOUSLY PREPARED TRANSCRIPT." All requests for a copy of the enclosed transcript shall be sent to: ndahl@sccourts.org***

INDEX

Description	Page
(NONE)	

EXHIBITS

(NONE)

Transcript Legend

Dash (--)	Indicates an interruption in speech
Ellipses (...)	Indicates trailing off in speech
Phonetic (ph)	Indicates a phonetic word
(Inaudible)	Indicates word(s) are not discernable due to audio recording quality
(sic)	Word(s) said but may be incorrect

P R O C E E D I N G S

THE COURT: All right. Now, for the record, we are here on Discover Fresh Foods versus Concepcion, et al., 2022-CP-23-00240. And the reason -- I'm not sure, and you may have thought this case was ended, but let me kind of tell you what happened and how we got here.

I think when Mr. Concepcion filed a motion in -- no, I guess back in April he filed -- or February he filed a motion to stay. I got to looking at the file and realized that there was a default -- a summons and complaint was filed January 18, 2022. Service on March the 9th, 2022. And then a default was entered on October 25th, 2022. So that was just that he was in default.

But, then, Mr. Concepcion filed two motions to stay before the actual judgment was entered, and I felt like that those motions to stay should have been considered before the judgment. Because judgment -- he filed a motion on June 7, 2023 and October 23, 2023, but the judgment wasn't entered until October the 2nd, 2024, and I didn't see in the file where those motions to stay had ever been addressed. I think before the judgment could be finalized, those motions should have been heard. I

think it was just kind of an oversight.

And since then, he filed -- so it's my understanding we have motions to stay, which one was filed in June the 7th of 2023, another to stay on October 23, 2023, then the judgment was entered in October of 2024, another motion to stay and vacate default judgment on February 11, 2025, and then on April the 1st the motion for appointment of guardian ad litem, and then another motion to set aside default judgment dismiss filed in August of 2025.

So that is the motions that I have that are outstanding.

Is that what you understand, Mr. Concepcion?

MR. CONCEPCION: Yes, Your Honor.

THE COURT: All right. Now, I know you sent quite a few correspondence to me or to the clerk of court -- or to me. I don't know how much has been filed or what. I mean, in the last week we got some stuff. I know that those -- a lot of those deal a lot with the merits of the case. We are only here today for the purposes of your motions to stay and to vacate, and the motion for an appointment of guardian ad litem.

So -- all right. I'll hear from you. And

the way I do it is I'll hear from you since you have the burden, and then I'll hear from Ms. Timmons, and then I'll hear follow up with you, okay?

MR. CONCEPCION: Sure. Good morning. Thank you, Your Honor. Good morning to counsel for the plaintiff.

I -- just to be very clear, I was detained in New York since April -- sorry, August of '21. I arrived in South Carolina on October 11th of 2024. While I was detained in New York at the Brooklyn MDC facility, I -- I do concede that I was served on time by the Plaintiff. I tried then to -- it took me a little bit, but I tried to obtain attorneys to defend me on this matter, and actually we did before the pleading was due.

THE COURT: And that was some guy from Alabama, maybe?

MR. CONCEPCION: No. This attorney is actually here from South Carolina. Mr. -- may I say his name or?

THE COURT: That's fine.

MR. CONCEPCION: His name is Mussetto.

THE COURT: Okay.

MR. CONCEPCION: John Mussetto. So we signed

a contract with him. I sent this court a copy of that contract where he was supposed to respond for my wife, National Risk Solutions, and myself. He did not. And, in fact, the following day my wife actually texted him -- I also sent this course -- the Court a copy of the text -- asking one of the attorneys if the responses were sent in, and he, in the text, responded saying, Yes, it was.

For many months my wife was asking for copies of the -- of whatever response was sent into the court. We kept getting a response saying we had nothing to worry about, that they sent in a response, they sent in a response.

Further down the line, many months later, I get now a notice of default -- I think it was entry of default, or something like that, and I was shocked. I tried to call the attorney, Mr. Mussetto. He wouldn't pick up. But then we finally got him on a three-way call on the prison line. After many arguing back and forth, he said that he did communicate with the plaintiff's attorney, but he didn't file anything.

During this time, I was placed in protective custody. In protective custody -- the last stint that I did in protective custody at Brooklyn MBC, I

was there for six months. In protective custody, I have access to the phone twice a month, and no access to Internet, and very limited access to attorneys.

There was an attorney, Mr. O'Connor, who -- God bless his soul -- saw me during one of my attorney visits, and he said, Listen, I looked you up and I saw that there is a case pending in South Carolina, civil matter, let me try to get you at least the information on this. He's the one that helped me write a letter to the court saying that I would like to join this action.

In addition to that, he helped me in terms of calling Mr. Mussetto and Mr. Colon (phonetic). Apparently, Mr. Mussetto showed Mr. O'Connor e-mails that he had with the plaintiff's attorney, but he said that there wasn't anything really relevant regarding responding to this lawsuit.

Again, I think the Plaintiff focused on the six months that there was no response, that I didn't respond to the court. Again, I responded as soon as I could, as soon as I physically could. What I do want to stress -- the fact is this: When I arrived here in South Carolina, that's when I found out that the law does have here provisions

for those who are incarcerated. I didn't know this in New York. What I was told in New York was that since it is a civil matter, an attorney can't be appointed for you.

So, I mean, I tried everything I could. I hired an attorney. I responded as soon as I could. I wanted to join this, you know, join this action -- I was not running at all from this action -- and present evidence showing that the case was frivolous, that it was malicious, and so forth.

Now, in these provisions that I saw, that I picked up just recently, there are provisions that show 4(b) South Carolina rules in terms of how to serve an inmate. The Plaintiff did serve that, did do it correctly. So I conceded to that.

In terms of 17(c), the wording in that says that a GAL shall -- particularly if an inmate is out of state -- that the inmate shall be represented by a GAL. I didn't know that that was a possibility, Your Honor.

Also, in terms of 55 -- Rule 55, although it doesn't explicitly say that an inmate is protected, it does have the provision for minors and incompetent folks, and I think that that just

implicates 17(c), right, that it just continues this idea that if you are a minor, if you are an incompetent person, or if you are an inmate, that while -- again, it doesn't explicitly mention the imprisoned person, but it does mention the protection for the same group of people.

So what -- you know, in addition to all of this, I do also want to attack collaterally the judgment, Your Honor. Because, like I said, while late in this process, the Plaintiff gave a deposition that made it very clear and much easier for me to come forward and say, Listen, this person has committed perjury and has lied. And even after he had made his admissions during this deposition, the plaintiff's attorney, counsel, proceeded to move forward to submit a new -- a renewed motion.

I sent to the court many examples of where the Plaintiff did commit perjury. I sent the court -- what I did not send the court was a copy of the deposition, because what I have, my copy, is based on the criminal case.

Now, I'm going to tell you why this is so important. Because just in the last week I was just made aware that, for example, I think the plaintiff's attorney submitted a supplemental

motion. I didn't get a copy of it, but I did ask what was -- at least what were the exhibits that the plaintiff's attorney presented. I was made aware that the plaintiff's attorney presented the indictment of the criminal matter that is almost a photocopy of the complaint.

What I do want to say is that in the last week there has been a change in the case, Your Honor. The government has decided and submitted a motion to dismiss the indictment as to my wife, Kendry Tavarez Feliz. And in that -- and I'm going to quote it very specifically. It says, "Based on the evaluation of new information received in the continued investigation of this matter." This was just this week. I actually received this news on Saturday, this past Saturday.

Now, while this is -- while the indictment and the criminal matter is -- is -- it's moving in a really fast way because there is a lot of changing things that are going on, I just need the Court to understand that while the government has evaluated this new information, I ask this Court to do the same, to evaluate the information that I have submitted, that I have only just recently been able to get access of, because the government had

my -- had the cellphone.

On July -- excuse me, on June 24th, 2025, I did sign permission for the Secret Service to access my phone. And just last week I received an e-mail from my attorneys -- one of my attorney colleagues stating that I still have two thousand pdf pages that I haven't even reviewed on text messages regarding her client, Mr. Smart. I haven't even started reviewing the text messages from his wife and everyone else that could have been involved in one way or another.

So the messages and the information that I've been able to forward to the Court were things that we had in our possession, but everything else I did not have. I think that I've presented enough to, one, demonstrate that because of the restraints of being detained in New York; two, that I hired an attorney to respond to this matter; three, I even went as far, Your Honor, as submitting a 1983 complaint to the federal court regarding this attorney. I went as far as reporting him to the ODC. I also brought documents on that, if the Court wishes to see. They said that -- the last document that I received on that said that that investigation is still -- is still pending. There

was an active investigation on this, so this is why I couldn't be so -- so clear in terms of, here, look, this is proof that this man is absolutely lying.

Now, I understand also that the counsel for the Plaintiff made a reference to me pleading guilty to the bank fraud. Now, I cannot give details on that, Your Honor, but I am going to be very, very clear. Initially, when I was working with Mr. Smart, Mr. Smart was in that time separated from his wife. The agreement was, Listen, let's do it this way so she doesn't see the money, period. I didn't know I was committing bank fraud at that time.

THE COURT: Again, I don't need to get into the substance. But let me ask you this, and I might be getting this confused with another matter, but wasn't there an attorney from Alabama or somewhere that was at some point involved?

MR. CONCEPCION: No, Your Honor. That's the attorney that was pro bono that would do -- once in a while he would come and say, Listen, this is what you received. Because I was sending in notices to the court, and nothing. I wasn't getting a response back. I wasn't -- and I didn't know what

else to do. That's another reason why I kept sending all of these back-to-back motions in while we were here, because I wasn't getting a response back from anyone.

Now, the plaintiff's attorney knew that I was detained in New York. I'm sure she's aware of the provisions for incarcerated folks. Also, based on the information that my attorney said, Andrew McKenzie, who is here, that I think at one point, at one of the hearings, Andy Arnold, who was defending another defendant, did mention that I probably should be assigned a GAL. Nothing happened. Nothing happened.

So, I mean, I think the plaintiff's attorney is right when she says that, you know, ignorance is not a defense, but, look, I cannot compete with her because I'm not an attorney. I also cannot compete with her because I don't know the law, Your Honor. And I could not compete with her because I was detained in New York, out of state, and under -- because of the type of crime I was being accused of, I spent a long time in protective custody.

And so just on that alone, and the fact that the motions that I sent in were not being addressed, this is why we're here today.

THE COURT: Okay. And I also want to make clear at the beginning, too, I know you have filed motions on your behalf, but these would not apply to any other parties.

MR. CONCEPCION: That's correct.

THE COURT: I just want to make sure you are aware of that.

Is your wife Kendry Tavarez?

MR. CONCEPCION: That's right. She's here, Your Honor.

THE COURT: All right. But these motions would not apply to her?

MR. CONCEPCION: They do not apply to her. But the reason why I bring her up is because, again, based on these allegations that were made against me and this lawsuit, this indictment came forward, and now the federal -- look, the years that I've spent in Brooklyn MDC and all of the inmates that I have met there, I didn't meet not one that the federal government dropped all of their charges -- not one. And the ones that I did hear about, what I did hear about is that they didn't move forward, quote, end quote, because maybe they didn't have enough -- enough evidence.

This is very different. The language here is

very clear. It states that they dropped the -- dismissed the indictment based on the evaluation of new information received in the continued investigation.

THE COURT: Anything else on your motions?

MR. CONCEPCION: I think that is it, Your Honor.

THE COURT: Okay.

Ms. Timmons.

MS. TIMMONS: Would you prefer me to stay sitting to speak in the microphone? I am used to standing, but --

THE COURT: Whatever you want to do is fine. We can hear you if you stand.

MS. TIMMONS: Okay. Thank you. May it please the Court, Your Honor. My name is Sarah Timmons. I'm appearing on behalf of Discover Fresh Foods. It is our position that all of Defendant Concepcion's motions be denied because we have met the requirements under the law. It is proper for him to be held in default, and we should be allowed to proceed on default judgment.

I would say that quite a bit of the representations being made by Mr. Concepcion amount to misrepresentations to the Court as to what

happened, but I would like to start with the procedure first to show why it is proper to move forward with default -- entry of default and default judgment, and then address some of the other concerns as well.

So under the procedure -- and we've outlined the procedural history in detail, but as Your Honor is aware, under Rule 5 it clearly states that the requirements are that we have to serve a defendant in default with a complaint and any amended complaints, none of which there were, and that is the extent of the requirements under serving the defendant in this matter.

The brief in our case, Your Honor, clearly states that this case has been pending since January of 2022, and it is arising out of extensive fraud that occurred up until 2021 when Mr. Concepcion was arrested by the federal authorities related to child sex crimes, which he ultimately pled guilty to, and that's why he is currently serving in prison.

We properly served him with a summons and complaint at MDC Brooklyn, which he admits to, on March 9, 2022. And, Your Honor, I think some of the allegations and the explanations that he's

arising to really gloss over the timeline and the amount of procedural history surrounding that, and he doesn't deny that he had access to legal counsel from the very beginning. His wife was -- is in Greenville, South Carolina, and he was in contact with her.

So any argument to the contrary that he didn't have access -- you know, we did receive occasional correspondence from the New York attorneys during that period of time, and no one ever during -- starting with January of 2022, after he was entered into default, which would be October 25, 2022, going forward, we would, you know, occasionally receive correspondence from legal counsel, whether it be in New York or otherwise. No one ever filed a motion to appoint a guardian ad litem or file a motion to stay. And so his timeline of what happened is not correct with our observation of the court.

The federal indictment in this case -- the federal criminal indictment related to the fraud crimes in this case, Your Honor, commenced on October 10, 2023, through which he would have been appointed federal criminal counsel down here in Greenville, South Carolina. So, again, I

completely disagree with Mr. Concepcion's narration of the facts in terms of what he did or did not have access to.

Again, he was served properly March 9 of 2022. He did not file an answer. We filed a motion for entry of default October 19 of 2022, which was entered on October 25 of 2022.

Now, I will say that Judge Verdin was the judge presiding over the entry of default at that time, and there was a little bit of confusion over the certificate of service, which is what is issued out of prisons versus an affidavit of service. So we worked through that, and that is why they were split.

Subsequently, Your Honor, we filed a motion for default judgment in February 9 of 2023 for 6 point -- $6,590,204.26. The Defendant was personally served with all of that at MBC Brooklyn on April 24, 2023. So we're still talking, like, over two-and-a-half years ago, Your Honor, in which he would have received notice of all of that.

We contend that default judgment was proper. The only delay, and the reason for default judgment being pending as long as it was, is that the judge at that time determined that because some of the

causes of action involving Defendant Mahone (phonetic) were joint and several, they had to wait until his liability was ascertained prior to the default judgment moving forward. So there was no question, whatsoever, at any point in time, as to whether the entry of default was proper or not.

And I might note that Ms. Tavarez has appeared at the hearing on the -- I think it was the entry of default, and the judge at that time made no movement, whatsoever. There were never motions filed on her behalf, on behalf of National Resolutions, or Concepcion to the contrary for this extensive period of time while very expensive litigation was occurring.

We did see that Defendant Concepcion filed what purports to be a motion to stay judgment on October 23, 2023, and where he purports to make a pro se appearance December 21, 2023. I might note that I did see some correspondence indicating he might not have filed a fee, or the clerk of court didn't perceive that it was a motion at that time. There were extensive hearings going forward after that. Judge Morgan was presiding over a substantial of them, and at no time did it appear to the Court that a hearing had been requested or

that there was a gap in the procedural posture of the case. So my understanding was these were never interpreted until recently to be motions, or he didn't request a hearing.

Moving forward, after Defendant Mahone's case was settled and a stipulation of dismissal was filed, we finally moved forward on September 19, 2024 for a renewed motion for default judgment, which had been previously filed, and of course was entered on October 2, 2024.

We've already -- we received the transcript of judgment, executed the nulla bona as to the property, and only after all of this did Defendant again appear and start filing motions, which we perceived to be continued harassment of the Plaintiff, who was the fraud victim in this case, in attempts to delay our right to seek the collection of the judgment that my clients sustained, which nearly, basically, destroyed his business, Your Honor, and was tantamount to over six million dollars in fraud.

Your Honor, the first time that Mr. Concepcion filed for an appointment for a guardian ad litem was April 1 of 2025, after all of this had occurred. He already admits that he had access to

and was in communication, and his wife was in communication, with legal counsel going all the way back. And I might argue that -- and I might note -- that at no point in time prior to that was there any motion for appointment of guardian ad litem.

I do concede that at some point in time Mr. Andy Mahone, who was legal counsel for -- sorry, Andy Arnold, who was legal counsel for Jeff Mahone, at one point did raise the issue of appointment of guardian ad litem, but he did not make a motion for appointment of guardian ad litem. His family, no friends made a motion for guardian ad litem, and all of that would have been required in order for the appointment of guardian ad litem. And Judge Morgan, at that time, said, Okay, if there is no motion, and I said, Your Honor, I'm not objecting to it, but my client is not going to pay for it. They were the victim of the fraud. At every single point in time he could have moved for appointment of guardian ad litem. Entry of default had been properly entered.

And so, Your Honor --

THE COURT: I mean, again, what is your take on -- he referenced 17(c), a person in prison

outside of this state shall appear by guardian ad litem.

MS. TIMMONS: I would say that the -- well, first of all, he's been in Greenville, South Carolina, since -- when?

You've been in Greenville, South Carolina or in Spartanburg County Detention Center since?

MR. CONCEPCION: October 11, 2025.

MS. TIMMONS: October 11, 2025. And prior to that, Mr. Arnold was here. I mean, I think that if there is an argument -- let me pull the rule really quick so I can speak to it properly.

In terms of Rule 17, it does say that the guardian ad litem shall be appointed upon application of such person of a relative or a friend, Your Honor. And it also says in Rule D(6) that the guardian ad litem may be appointed upon application of any other party to this action. So there is -- while I might admit potentially -- so from my perspective, Your Honor, that would have required a person, relative, friend, or another party in this action moving for the appointment of guardian ad litem, none of which happened. It doesn't foreclose the appointment of the guardian ad litem by the court. But Judge Morgan, during

the hearing, declined to do so finding there was no motion, and he didn't see that it was necessary because the default had already been entered.

THE COURT: And I haven't gone back and looked at Judge Morgan, but was this addressed in the order?

MS. TIMMONS: It wasn't before the Court, Your Honor, but Mr. Arnold did raise it. But I said if Mr. Arnold wants to move on behalf of his client for appointment of guardian ad litem, he can. He declined to do so. I'm certainly not going to, you know -- my client refused to pay, and of course Mr. Concepcion has a wife, family here who at any point in time was aware of the proceedings from the beginning and could have moved for appointment of guardian ad litem, and that didn't happen for the pendency of this case going back to January of 2022.

So, Your Honor, I would take the position that while that rule does provide for the mechanism through which imprisoned persons may be appointed guardian ad litems, it clearly contemplates the motion by a party, friend, or a relative, and that never happened in this case.

THE COURT: Was Mr. Arnold representing his

wife?

MS. TIMMONS: Mr. Arnold was representing Jeff Mahone, who settled the claims against him --

THE COURT: Okay.

MS. TIMMONS: -- related to that case.

And, Your Honor, I mean, the criminal -- the federal criminal case is still pending. And so it is our position that the appointment -- and now that he's local, Your Honor, I would say that the entry of default and the default judgment are both proper, and we should be allowed to proceed to collection of judgment.

I don't see the need for the appointment of guardian ad litem, but if Mr. Concepcion wishes to have one and pay for such, he's more than welcome to do that. But I think the procedural requirements for service and the pendency of the litigation of this case were all properly met, and so we should be allowed to collect our judgment.

You know, Ms. Tavarez always appeared whenever there was a hearing, but she never moved. The rules are very clear, Your Honor, that the excusable -- like, the failure to understand the law, excusable neglect, mistake, misrepresentation, all of that -- well, basically -- hold on. Let me

go back. I'm getting a little bit out of my -- we're jumping around.

So it is our position, Your Honor, that there was no need at that time to appoint a guardian ad litem. And if there were, that it should have been through the mechanism of him or his counsel or a party filing to appoint a guardian ad litem. So Rule 17(d) was not violated in this case. Moreover, there is no good cause for setting aside entry of default, because he cannot show excusable neglect, for the reasons I just stated. And the failure to prioritize a legal obligation doesn't meet the highest standard of excusable neglect.

If he had a miscommunication with his counsel at that time, he had plenty of time through his wife or otherwise. He was in correspondence quite frequently with Mr. Arnold related to the defense of Mr. Mahone's case, so he had access to various individuals where they could have assisted him. Mr. Arnold also mentioned that in court, so they were all aware.

But I think, more importantly, Your Honor, is Exhibit 5 to this case where the New York attorney notifies him that -- and that was back in September 3, 2023, so we're still talking two years

ago where he says there is no record of the motion for stay, and you need to hire local counsel. I cannot litigate this case for you. That is going back to September 3 of 2023.

So even going back within, like, a year or so of the early litigation, Mr. Concepcion was well aware of the issues in this case and that he needed to retain local counsel, or at least have his wife appear.

So in addition to the fact that he's not entitled to the appointment of guardian ad litem under Rule 17, we will also argue that he failed to act with due diligence because for the -- he waited until almost six months after being served with the entry of default before taking action prior to filing his pro se motion to stay judgment.

There was no hearing requested. No order was entered in this motion. There was no litigation from the court to him saying that there were any deficiencies in the filings. And then he waited almost three years after being served with the complaint to first request a guardian ad litem.

This is an expensive, long case that created an extensive amount of discovery, litigation expenses, and Defendant has not demonstrated that

there is any merit, whatsoever, to reopening this case this late in the game, Your Honor, to continue to litigate what has already been decided.

Even if he were able to demonstrate excusable neglect, which we deny, all of the claims that he just raised, which were not supported by any affidavit or to the contrary, are meritless, Your Honor, and futile, because all of that would have occurred before 2021, which would be barred by the statute of limitations.

Therefore, even if he were to try to seek to assert certain counterclaims arising out of the common nucleus of this case, Your Honor, all of that would have been barred in 2024. So he couldn't even assert the claims if he wanted to. Those would all be futile, and the tremendous prejudice that my client who has already suffered tremendous loss by losing over $6 million in this fraud case and has been forced to litigate this case all the way through from 2021 going forward, to now reopen the case after this has all been resolved would be -- would require my client to suffer tremendous prejudice, especially if Mr. Concepcion were allowed to somehow be able to alleviate an entry of default, of which he was

served with going back to 2022, Your Honor.

So I disagree that any confusion with his attorney -- I mean, he's welcome to file complaints with the ODC. My understanding is this 1983 case was dismissed by the federal court and is not pending.

And with regard to any kind of argument over the fact that his wife -- that her federal indictment may have been dismissed by Bill Watkins on the federal side, that is no indication, whatsoever, as to the properness of proceeding with this case, or the fact that Mr. Concepcion, along with nine or ten other individuals, have also pled guilty in that manner, Your Honor. That would have been within the purview of Mr. Watkins and the resources of the United States whether he intended to proceed.

I can't speak to the conversations that Mr. Watkins has had with the criminal defendants in that matter, but Mr. Concepcion, my understanding has been interviewed several times. He pled guilty, and the indictment of all of the other defendants in that matter has proceeded. So I don't think the fact that Mr. Watkins has decided to not proceed, for whatever reason, against

Ms. Tavarez in the criminal case should have any bearing, whatsoever, on Mr. Concepcion's motion to have an entry of default lifted, stay the case, or appoint a guardian ad litem, Your Honor. The ship has left the dock. We've complied with all of the procedural requirements in this case to allow my client to finally seek to recover what little remains, and the resources that were taken from his company. We respectfully would request, Your Honor, to deny the motions for the reasons outlined in the briefs and our argument.

Thank you very much.

THE COURT: Couple of questions to follow up. Did his wife ever have counsel?

MS. TIMMONS: Yes -- in this case?

THE COURT: Yes.

MS. TIMMONS: No. Honestly, Your honor, I'm not really sure. I couldn't tell from any correspondence whether Mussetto was appearing on behalf of all three of them, or one of them. You know, we did receive some correspondence, but we never agreed to any extension or anything like that. So it was unclear, to me, what Mr. Mussetto was doing. I received very limited correspondence from him. He never filed a motion for a

continuance of the deadlines. He never filed a motion to lift the stay while he was able to obtain other counsel. It literally went radio silent at the very beginning, and we proceeded with this case.

THE COURT: You never had any understanding with Mr. Mussetto about anything?

MS. TIMMONS: No.

THE COURT: Okay.

Yes, Mr. Concepcion, your response?

MR. CONCEPCION: Sure, Your Honor. Just briefly, I did -- I did mention the indictment only because the plaintiff's attorney did present that as an exhibit. And, again, just presenting the importance of because my wife is also named as a defendant here in the civil matter, and why then she was dismissed -- the indictment for her in the criminal matter was dismissed.

Second is the question I think that we should be asking is that given -- given the significant interest and potential damages involved in this matter, Your Honor, in this case, and the fact that I was imprisoned out of state at the time, and my attempts in joining this action should be -- should the Court have exercised his authority at that time

to appoint a GAL, and the Court should exercise the authority to do it now.

I think I tried my best. I tried my best. I was not running from this matter. I was running towards it by hiring the attorney. I mean, I think that everything that the plaintiff's counsel said in her motions support the fact that I was running towards this.

Now, if it didn't work out for me, that's another story. But in terms of my intentions, and I know that hell is paid with good intentions, I tried.

The second thing is that my wife speaks no English -- no English at all. So she's sitting back there, and she does not understand at all what is going on. That was the reason why we hired Mr. Mussetto.

Now, I didn't have any money, Your Honor, to hire another attorney. The attorney from Alabama does not have a license to practice in the state of South Carolina. The attorney -- at that time when I was brought here, my attorney said to me very clearly, I cannot -- Mr. McKenzie said, I cannot assist you in the civil case at all.

So, again, I was by myself. So, I mean, I'm

trying to understand also the rules of 17(c). When it says "shall," I mean someone should have figured out if this guy is not answering, but he's sending in letters to the court, he's sending in motions to the court, it looks like he does want to join. I mean, the fact that the final judgment -- and she renewed -- she submitted a renewed -- it was because the case was not over. The case was not over when there was an entry of default. It was interlocutory because Mr. Mahone's case was still pending. And until that case was closed, then they can submit a final judgment. Between that period of time, I still had the opportunity to come in and challenge that first default.

Now, the fact of the matter is that it's also not my fault, Your Honor, that the Plaintiff decided to confess -- if you read the deposition -- to confess his participation. What he is saying that I did, he waited very late to do that. He did that on July 29 of 2024. And based on that, and based on the information that I have now, it is what I'm presenting to the Court.

Now, if Mr. Smart would have come clean way before, then this would have been a different situation. But he waited until then to start

talking about his participation, who he was paying, and what method he was using that he authorized, directed, and all of this to pay, which is one of the methods that they are suing me about regarding the phantom employees.

I submitted to the Court other evidence that goes to him having knowledge to National Resolutions. I submitted evidence to the court that he had knowledge also regarding the salary increases. I mean, there's tons of recordings that Ms. Timmons hasn't heard yet, because I haven't heard them yet.

So there are things that they are not aware of, but the federal government now is. And if the court just has a fact hearing regarding my motion for fraud upon the court, I think it would be very clear. Because forget for a second all of the evidence that I have submitted, all of the exhibits, Your Honor, the text messages with -- between Mr. Smart and I, or the people that were getting paid, or the people that he denied paying, and then obviously it shows that I was paying, so forget about that.

And, yes, I'm a convicted felon. Yes, ma'am. But I'm going to say this: Don't take me by my

word; take it by his word. So if you look at the deposition, look at what he confessed to, specifically what he confessed to and how it goes to the heart of this case, and the fact that they decided to then still move forward and submit a renewed motion, that should prove fatal because they decided then to put fraud upon the court knowing that the man confessed -- that he confessed.

Now, in addition to his confession, I'm showing also there was perjury --

THE COURT: As I told you earlier -- not to cut you off -- but, really, all I'm here for is to hear your motions to stay and set aside the default. You know, the substantive matter, that's really not -- that is not what I'm to consider. I'm to consider the procedural part of this, and apply the law, and that's kind of what I have to do with your motions, okay.

MR. CONCEPCION: Got it. Your Honor, I can't compete with Mr. Smart and his resources, and Ms. Timmons. I cannot.

I did not receive her supplemental motion. I'm sure she --

MS. TIMMONS: It was mailed to you.

MR. CONCEPCION: Let me finish.

So I'll tell you how she mailed it the last time. She submitted the motion on a Tuesday. She mailed it on a Thursday, and I got it the same day of the canceled hearing -- on the same day.

The same thing I'm sure is going to happen. She submitted the motion, I think, last week, Tuesday. She probably put it in the mail on Thursday, I'm assuming. Because Spartanburg County, as opposed to Brooklyn MDC, they are excellent with providing me my mail. And to this day I have not received that supplemental. I cannot compete.

THE COURT: I guess it's a memorandum, is what she's talking about.

MS. TIMMONS: Yes, Your Honor. It was mailed the same day. I mean, that is what the procedural rules require. If Your Honor wants to have, you know, another follow-up hearing on this. I mean, I don't see any reason --

THE COURT: In looking at her memorandum, her memorandum basically says what she just argued.

MS. TIMMONS: Yeah. Yes, sir. It's true.

THE COURT: It wasn't a separate motion. It was just her response to your motions. And if I

remember in reviewing it, it was pretty much exactly what she argued here this morning. It was not a new matter or new motion or anything.

MR. CONCEPCION: Understood.

THE COURT: Anything else?

MR. CONCEPCION: That is it, Your Honor.

THE COURT: Ms. Timmons?

MS. TIMMONS: No, Your Honor. I would just say that this case was over when he was found to be in default in 2023 and pled guilty to the criminal charges as well, Your Honor. I would respectfully request that my client who -- as you can see, Your Honor, my client has had to deal with quite a bit of victim blaming and expenses related thereto. I respectfully request that this Court finds that the procedural requirements were met to have default entered and default judgment, and that my client finally be able to seek the justice he's entitled to under this case, and proceed with default judgment.

THE COURT: In addition to my concern about the original thing, I mean, he did file a motion to set aside default judgment, which is kind of separate. But I'll review all of this in light of your arguments, both sides. I'll look at the law

very carefully, and I'll let you know what I come up with.

MS. TIMMONS: Thank you, Your Honor.

THE COURT: Are you going to be in Spartanburg? For how long; do you know?

MR. CONCEPCION: I'm not sure, Your Honor. Because this is still an ongoing investigation, the criminal --

THE COURT: Do you think it will be at least another week? What I'm saying is I want to make sure when I issue an order that it gets to the right place.

MR. CONCEPCION: I believe so, yes, sir, Your Honor.

THE COURT: We're probably good to send it to Spartanburg?

MS. TIMMONS: I guess Mr. McKenzie can probably speak more to that than me, but I would expect that he would be housed there until his sentencing, which hasn't been scheduled yet.

MR. McKENZIE: That is correct. The sentencing hearing hasn't even (inaudible).

THE COURT: Okay. I just want to make sure that, you know, for any deadline purposes it is not an issue with, you know -- all right.

Thank you, Mr. Concepcion.

Thank you, Ms. Timmons.

(Whereupon, the audio and video for this hearing concluded.)

CERTIFICATE OF TRANSCRIBER

Case Name: Discover Fresh Foods, Inc., v. Jesus Concepcion, et al.

Case No.: 2022-CP-23-00240

Date of Hearing: October 6, 2025

****

I, Natalie Dahl, do hereby certify that the foregoing transcript is a true and correct record of the recorded proceedings; that said proceedings were transcribed to the best of my ability from the audio recording.

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

Natalie Dahl, RPR

_____

APPENDIX A-14

Order denying relief, entered October 14, 2025

Document label superimposed on following pages

ELECTRONICALLY FILED - 2025 Oct 14 10:01 AM - GREENVILLE - COMMON PLEAS - CASE#2022CP2300240

STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE DiscoverFresh Foods, Inc., Plaintiff, v. Jesus Concepcion, Kendry S. Tavarez a.k.a. Kendry Solange Feliz, and National Risk Solutions, LLC, Defendant.	IN THE COURT OF COMMON PLEAS THIRTEENTH JUDICIAL CIRCUIT **ORDER DENYING DEFENDANT'S MOTION TO STAY, MOTION TO VACATE, MOTION TO SET ASIDE DEFAULT JUDGMENT, MOTION FOR DISMISSAL, AND MOTION FOR APPOINTMENT OF GUARDIAN AD LITEM** C.A. No.: 2022-CP-23-00240

This matter came before the Court on October 6, 2025, for a hearing on a Motion to Stay and Vacate Default Judgment filed on February 11, 2025, a Motion for Appointment of Guardian Ad Litem filed on April 1, 2025, and a Motion to Set Aside Default Judgment, Final Judgment, and Dismiss filed on August 27, 2025, by Defendant Jesus Concepcion ("Mr. Concepcion"). Appearing at the hearing were Mr. Concepcion, unrepresented, and Sarah Timmons, Esquire on behalf of Plaintiff.

Having reviewed the pleadings, the Motion, the briefs and exhibits submitted by the parties, and the record, and after considering and reflecting upon the arguments of the parties, the Motions are **DENIED.**

PROCEDURAL HISTORY

A Summons and Complaint was filed for this matter on January 18, 2022, and the Summons and Complaint was served on Mr. Concepcion on March 9, 2022. Plaintiff filed an Affidavit of Default and Motion for Default on October 19, 2022. An Order of Default was then

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issued by the Honorable Letitia Verdin on October 25, 2022. Default Judgment was entered against Mr. Concepcion and other Defendants by the Honorable G. D. Morgan on October 2, 2024.

Mr. Concepcion has filed the following Motions in this matter: 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. 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.

ANALYSIS

First, the Court will address Mr. Concepcion's various Motions to Stay. The grounds for these Motions are generally that the action and execution on the Judgment should be stayed because of his initial incarceration in New York and subsequent transfer to South Carolina and he had retained counsel to file an Answer. Upon careful review of the record, Mr. Concepcion does not establish a basis for a Stay of the proceedings and cites no authority for such a stay.

Next, the Court will address Mr. Concepcion's Motion to Vacate and Motion to Set Aside Default Judgment. The record establishes that Mr. Concepcion was properly served through the New York prison system on March 9, 2022. In the hearing, Mr. Concepcion conceded that he was properly served and that he had no issues with that service. Nonetheless, Mr. Concepcion failed to file an Answer for over seven months before Default was entered against him. Mr. Concepcion argued that he had retained an attorney to file an Answer but the attorney failed to do so. As an exhibit to his Motion filed on February 11, 2025, Mr. Concepcion presented a Representation Agreement which he had entered with the Law offices of John M. Mussetto, LLC to represent him

ELECTRONICALLY FILED - 2025 Oct 14 10:01 AM - GREENVILLE - COMMON PLEAS - CASE#2022CP2300240

in this matter. There was no indication that the firm ever filed a Notice of Appearance with the Court nor requested an extension to Answer. The Court finds that this does not rise to the level necessary to set aside the default judgment. Rule 55(c), SCRCP, requires that a party must establish "good cause" to set aside the entry of default. However, once judgment is entered, default judgment may only be set aside according to the provisions of Rule 60(b). Because judgment had been entered when these motions were filed, Rule 60(b), and not Rule 55(c), is applicable. When applying Rule 60(b), Mr. Concepcion has failed to establish "mistake, inadvertence, surprise or excusable neglect;" new discovered evidence; fraud, misrepresentation, etc. by an adverse party; void judgment; or that the judgment was satisfied, discharged, etc. SCRCP 60(b)(1-5). Mr. Concepcion argues that during incarceration he did not have access to the law library, had limited access to a telephone and relied on his purported counsel. None of these mitigating factors fall within the categories listed in Rule 60(b). Further, Mr. Concepcion clearly had access to the Court system as shown by his filing numerous motions over more than a 2-year period. Similarly, under the same analysis, even if Rule 55(c) was applicable, Mr. Concepcion has also failed to establish "good cause." Therefore, the Court finds that Mr. Concepcion has failed to establish a basis for setting aside the entry of Default under Rule 55(c) or Default Judgment under Rule 60(b).

In his last Motion filed on August 27, 2025, Mr. Concepcion seeks a dismissal of the action based on alleged fraud committed by the Plaintiff during his deposition on July 9, 2024, and again reiterates his incarceration in both New York and South Carolina. The deposition in question was taken after Mr. Concepcion had been held in default. Mr. Concepcion fails to establish a basis for dismissing the action, especially in light of the Court's ruling validating the Default Judgment against him. Thus, this Motion is denied as well.

ELECTRONICALLY FILED - 2025 Oct 14 10:01 AM - GREENVILLE - COMMON PLEAS - CASE#2022CP2300240

Finally, the Court will address Mr. Concepcion's Motion for Appointment of Guardian Ad Litem ("GAL"). Mr. Concepcion not only asserts that a GAL should be appointed, but that this is also a basis for setting aside the Default and Default Judgment for the failure of the Court to appoint one. Rule 17(c), SCRCP, requires the following:

> 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 …

A GAL can be appointed upon application of "relative or friend" or by "any party to the action" within 30 days after being served. SCRCP 17(d)(4,6), none of which occurred here. As confirmed by Mr. Concepcion, at the time of filing his Motion on April 1, 2025, he was imprisoned in this State and being housed at the Spartanburg Detention Center awaiting sentencing on federal charges. Based on the holding in McCuen v. McCuen, 348 S.C. 179 (2002), Rule 17 does not impose a mandatory requirement for the appointment of a GAL. Although McCuen was an appeal from Family Court, the ruling of the Court is very germane to the issue before this Court: "While the language of Rule 17(c) does not expressly so provide, it is clear from applicable case law that the right to appearance by guardian ad litem is not absolute." McCuen at 182. The Courts have found that there is a distinction between a party that is limited by infancy or mental deficiency and the "physical restraint of imprisonment," which allows for an imprisoned party to "waive the appointment of a guardian ad litem." Id. (quoting In the Matter of Bishop, 272 S.C. 306, 309 (1979). This possibility of a waiver by an imprisoned party is not limited by the use of the word "shall" in SCRCP Rule 17. Id. at 184. In Green v. Boney, 233 S.C. 49, 66, the Supreme Court held that a defendant in a civil suit waived his right to appointment of a GAL by filing pleadings with the Court and failing to raise the issue of the appointment of GAL until the case was called to trial.

ELECTRONICALLY FILED - 2025 Oct 14 10:01 AM - GREENVILLE - COMMON PLEAS - CASE#2022CP2300240

In the case before the Court, Mr. Concepcion was not restrained from availing himself of the Court system as evidenced by his filing of a Motion to Stay prior to the Default Judgment being issued, and two additional Motions before filing his Motion for Appointment of a GAL thirty-seven months after he had been served with the Summons and Complaint and six months after final judgment had been entered against him. Therefore, the Court finds that Mr. Concepcion waived his right to the appointment of a GAL during his incarceration in New York and subsequently in South Carolina. No Motion was filed by Mr. Concepcion nor anyone on his behalf, until after the Default Judgment was entered, so this would not be a basis for setting aside or vacating the Default Judgment.

Therefore, Concepcion's Motions are respectfully denied, and the Court affirms the Default Judgment filed on October 2, 2024.

IT IS SO ORDERED.

E-Signature of Judge Gravely to follow

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Greenville Common Pleas

Case Caption: DiscoverFresh Foods Inc , plaintiff, et al vs. Jesus Concepcion , defendant, et al

Case Number: 2022CP2300240

Type: Order/Other

So Ordered

s/ Honorable Perry H. Gravely, #2755

Electronically signed on 2025-10-14 09:21:57 page 6 of 6

APPENDIX A-15

Motion for Reconsideration, filed October 21, 2025

Document label superimposed on following pages

IN THE COURT OF COMMON PLEAS

THIRTEENTH JUDICIAL CIRCUIT

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Civil Action No. 2022-CP 23-00240

DiscoverFresh Foods, Inc., Andrew T. Smart Plaintiffs,

v.

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

MOTION TO RECONSIDER ORDER DENYING DEFENDANT'S MOTIONS TO STAY, MOTION TO VACATE, MOTION TO SET ASIDE DEFAULT JUDGEMENT, MOTION FOR DISMISSAL, AND MOTION FOR APPOINTMENT OF GUARDIAN AD LITEM

IN THE COURT OF COMMON PLEAS

THIRTEENTH JUDICIAL CIRCUIT

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Civil Action No. 2022-CP 23-00240

DiscoverFresh Foods, Inc., Andrew T. Smart Plaintiffs,

V.

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

MOTION TO RECONSIDER ORDER DENYING DEFENDANT'S MOTIONS TO STAY, MOTION TO VACATE, MOTION TO SET ASIDE DEFAULT JUDGEMENT, MOTION FOR DISMISSAL, AND MOTION FOR APPOINTMENT OF GUARDIAN AD LITEM

Motion for Reconsideration was timely filed. The Court of Common Pleas, Thirteenth Judicial Circuit entered its Order on October 14, 2025. Concepción received order via mail on October 16, 2025 (exhibit 2)

Mr. Concepción's custodial status: Concepción is currently detained at the Spartanburg County Detention Center.

COMES NOW, Defendant Concepción respectfully moves the Court for Reconsideration on its ORDER DENYING the MOTIONS referenced above filed October 14, 2025.

In Support of this Memorandum, Defendant Concepción shows the Court as follows: Rule 59 (e).

LAW

A motion under Rule 59 (e) long has been viewed as motion for reconsideration despite the absence of those words from the rule. Elam v. S.C. Dep't of Transp., 361 S.C. 9, 21, 602 S.E.2d 772, 778 (2004). The purpose of Rule 59 (e), SCRCP, to alter or amend the judgment is to request the trial judge to 'reconsider matters properly encompassed in a decision on the merits.' Anrnold v. State, 309 S.C. 157, 172-73, 420 S.E. 2d 834, 842 (1992) (quoting Budinich v. Becton Dickinson and Co., 486 U.S. 196, 200, 108 S. Ct. 1717, 1720, 100 L. Ed. 2d 178, 184 (1988). As a result, "a party is usually allowed to ask the court to reconsider its decision even if it means rehashing all or part of an argument previously presented." Elam, 362 S.C. at 21, 602 S.E. 2d at 778-9. Thus, a motion for reconsideration is "one final chance not only to call the court's attention to a possible misapprehension of an earlier argument, but also revisit a previously raised argument."

THE RELEVANT FACTUAL CHRONOLOGY OF EVENTS AND PROCEDURAL HISTORY

August 8, 2021, Concepción was detained for an unrelated criminal matter.

August 13, 2021, GCSO issued and served a search warrant on allegations made by A. Smart that are identical to his complaint.

September 9, 2021, Concepción was granted bail on the unrelated criminal matter.

September 27, 2021, GCSO issued an arrest warrant based on A. Smart's allegations and the SDNY in the unrelated criminal matter submitted an application to have the Court revoke Concepción's bail.

October 4, 2021, Due to an Affidavit the Plaintiff submitted to the Court in support of revoking Concepcion's bail, the court revoked Concepcion's bail, essentially interlocking the unrelated case in NY and the criminal investigation that parallels this civil action in S.C.

January 18, 2022, the Verified Summons and Complaint was filed in this civil matter.

March 9, 2022, Concepción was served the Summons and Complaint.

March 17, 2022, Defendants Concepción, Tavarez, and NRS (collectively) retained the services of Mussetto and Colón, to represent and respond with a Motion to Stay due to the parallel criminal investigation in S.C. on Concepción, Tavarez and NRS, and due to the bail that was revoked in the unrelated criminal case in the SDNY in relation to the Plaintiff's identical allegation. On March 18, 2022, Attonery Colón texted Defendant Tavarez confirming the notice was sent to the court. On April 8, 2022, Defendant Concepción's responsive pleading was due (although Mussetto did contact Ms. Timmons, he never formally appeared or submitted the Motion to Stay, he went 'radio silent' as of today as per Ms. Timmons and confirmed by Concepción). In 2022 and in 2023, Concepción was placed in a Special Housing Unit, and again for six months from March of 2024 until late September of 2024. No legal library, two phone calls a month. This does not include the multiple national lock downs, facility lock downs due to

security issues and COVID quarantines from August 2021 through the end of 2023 (the facility lock downs can be confirmed online). Access to the court should go both ways. I am asked why I did not reach out for more than six months after the judgment was entered. I believe I just explained. Now why did the court not respond to my letters or motions?

October 19, 2022, The Plaintiff filed an Affidavit in Support for a Motion for Default due to the Defendant's failing to "appear, plead, or otherwise respond to the Complaint within the time allowed".

October 25, 2022, The Honorable Letitia Verdin issued an Order of Default due to Defendant Concepción failing "to file a timely response to the complaint," and "as of today, Defendants Tavarez, NRS, and Concepción have not responded to the Complaint. "

June 7, 2023, Concepción, after default was entered, submitted a motion to Stay. (Motion was never addressed).

October 11, 2023, Concepción and Tavarez were indicted on related Federal Criminal Charges that mirrors the civil case.)

October 23, 2023, Concepción submitted a motion to Stay clearly stating the "civil case at-hand should be stayed pending disposition of the underlying pending criminal prosecution, as the issues discussed in both are identical" and the responsive pleadings could interfere with my constitutional rights. (Motion was never addressed)

October 2, 2024, Honorable G.D. Morgan entered the Final Default Judgement against the remaining Defendants.

February 11, 2025, Concepción submitted a Motion to Stay and Vacate Default Judgment.

April 1, 2025, Concepción submitted a Motion to Appointment of Guardian AD LITEM.

April 21, 2025, Concepcion was never afforded a hearing on the motions submitted June 7, 2023, and October 23, 2023, before the Final Default Judgement entered. The court ordered an in-

person hearing be scheduled for July 21, 2025. The hearing was continued until a Writ requesting my appearance was submitted.

October 6, 2025, All pending Motions were heard.

SUMMARY OF ARGUMENT

Prior to the Default being Entered on October 25, 2022, The Court erred in not assessing if Defendant Concepcion, who was detained at the time out of state, had representation, was indigent, was in need of a GAL, knew he could be assigned a GAL, or made a conscientious decision of not wanting one.

The Court failed to consider the Motions to Stay submitted prior to the Final Judgment that addressed his Fifth Amendment concerns regarding the criminal case in NY, the parallel criminal investigation that started in August of 2021, the related civil case that started January of 2022, and the related federal indictment in SC on October 11, 2023.

The Court should have considered the request made by counsel for Defendant Mahon for appointment of a GAL. As stated in the October 6, 2025 hearing, a request for appointment of a GAL was made by counsel Andy Arnold, and the counsel for the Plaintiff stated she was not apposed to the idea, but her concern was who would pay for it. I ask this court to reconsider my Motions by appying Rule 59(e), so we may revisit the record, rules, statues, provisions, and arguments to find explicit examples on why the Final Judgment should be Stayed, Vacated, and Set Aside.

ARGUMENTS

1. MOTION FOR APPOINTMENT OF GAL Law

RULE 17 (c): 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).

Respectfully, allow me to do a brief assesment on the cases the Court cited in its Order and found to be germane to my case.

McCuen v. McCuen, 348 S.C. 179 (2002), the Court ruled against McCuen's request and considered that she waived her right to be appointed a GAL because she "was represented by counsel at all stages of these proceedings". Notably, the wife appeared through her counsel prior to the final hearing and while she was incarcerated, but failed to move the Court for appointment of a guardian ad litem until the day of the final hearing.

In the Matter of Bishop, 272 S.C. 306, 309 (1979), the petitioner was an attorney himself who appeared, and responded on his own behalf. The presumption being he is knowledgeable of the Law, Rules, Provisions, and Statutes.

Green v. Boney, 233 S.C. 49, 66, had counsel, "his able counsel, with full knowledge of the statute, filed answers and counterclaim and raised no question about a guardian ad litem until the eve of trial."

The common denominator for these cases is that all had competent counsel who represented them through their entire proceeding, were familiar with the Satutes, and made informed decisions.

I believe an appropriate and applicable example to my position is Gossett v. Gilliam, 452 S.E. 2d 6, 317, S.C. 82 (S.C. App. 1995), a forefeiture civil action (which makes this even more similar to my case) where the Court denied the appointment of a GAL due to the petitioner already being represented by an attorney. Quoting Gossett V. Gilliam, " While we agree with the trial judge that Rule 17(c) does not mandate the appointment of a guardian ad litem for an in-state prisoner named as a defendant in a civil action, we note that, as recognized in the last portion Rule 17(c), the prisoner's rights must be protected through alternate procedures." No alternate procedure was even considered in my case let alone assigning a GAL. "The court should evaluate whether a guardian ad litem is essential for the protection of the incarcerated defendant's rights under the particular circumstances of the pending action. Additionally, where the prisoner is represented by competent counsel, the appointment of a guardian ad litem would be superfluous." The theme of having counsel is made famous because the cases the court referenced, including this case that I am citing, all used as a base line the fact that they had representation. I ask the court to use this as a base line when reconsidering my position, not just the idea that I may have implicitly waived my rights to an appointment by waiting so long to request for one. I am not an attorney. This court is holding me to the same standards as if I were one. This court is aware of the circumstances regarding the attorneys I hired. I did not know I had a right to a GAL. Another noteworthy case would be Cobb v.Garlington (317 S.C. 86), 100 S.C. 51, 84 S.E. 302 (1915). (an

incarcerated defendant waived his right to the appointment of a guardian ad litem where counsel of his own choosing appeared for him). Again, never happened in this case. Quoting Gossett, "where an adverse judgement against a prisoner will affect present or future property right, the court should ensure either that a guardian ad litem is appointed or the inmate is at least brought to court prior to the entry of a default judgment against him for determination of whether a guardian ad litem is essential for the protection of the prisoner's rights. The spirit of the law demands no less". At the time of the default judgment hearing, Gilliam had counsel and thus, there was no need to appoint a guardian ad litem. Did the court consider any of the aforementioned at any stage of the action against me?

Rule 17(c) Editors' Notes you will find Rule 17(c) narrows existing practice by providing for a guardian ad litem only when the person is imprisoned outside of the State. Thus in the most common civil cases involving prisoners, post conviction relief proceedings, a guardian would not be required for an in-state prisoner who is normally represented by appointed or retained counsel; but the court has the discretion to appoint a guardian for an in-state prisoner.

Ordinarily, the inmate should be brought before the trial court prior to the decision of a guardian ad litem (GAL) in order for the court to adjudicate the inmate's indigency status, and allow the trial judge to assess the particular inmate's needs on an individual basis; if no GAL is appointed, then arrangements must be made to ensure the inmate's presence at the trial on the merits. Ex parts Foster (S.C. 2002) 350 S.C. 238, 565 S.E. 2d 290.

The court never assessed the needs of Concepción. Does this rise to the level of Rule 60(a) for oversight or 60(b)(1) a mistake, inadvertence, surprise or excusable neglect? Or did the Court err ("mistake"), 60(b) 1, by not protecting my interests from the Entry of Default on October 25, 2023 to the Final Order on October 2, 2024 when it rubber stamped the Order and Judgment? I pray the court will remedy this by reconsidering its Order and vacate the judgment and appoint a GAL.

2. MOTION TO STAY

I respectfully ask the court to reconsider its Order in denying my Motion for a Stay due to not establishing a basis and not citing any authority for such a stay.

In my Motion to Stay filed on October 23, 2023 (see exhibit 1), I specifically stated in line one, "I believe that this civil case at hand should be Stayed pending disposition of the underlying pending criminal prosecution, as the issues in both are identical". Line two refers to my responsive pleadings in that this action could interfere with my constitutional right.

In Alexis Warren, ET AL. v. Rosstrans and Services, LLC d/b/a, civil action no. 18-7599 section D (3) United States District Court Eastern District of Louisiana, states, "in determining to stay a civil action in the face of a parallel criminal proceeding, the courts generally consider 1.) The overlap between the civil and criminal case..." The investigation and search warrant at the Concepcion residence was issued in August of 2021, and the arrest warrant for Concepcion was issued in September of 2021, all prior to the civil matter basically tying our hands. Mr. Smart submitted an Affidavit in support of revoking my bail in the unrelated criminal matter in NY essentially interlocking all the cases back in October of 2022. I was no longer detained in NY because of the SDNY matter, I was now detained because the bail was revoked due to Smart's identical allegation. The Federal Indictment was filed on October 11, 2023. Three of the four defendants were being investigated, Concepción, Tavarez, and NRS.

In the cited case no party requested a stay. The court took it upon itself to do so and found that it was in the best interest of the parties. The court was primarily concerned with protecting Fifth Amendment rights.

The goal of hiring the attorney Mr. Mussetto was to submit the Motion to Stay before the pleadings were due and to explain that this case was based on Fraudulent allegations. The court was informed by counsel for the Plaintiff before the order for Default was issued on October 25, 2022 about the pending parallel criminal investigation and the court did not act. Not ruling on my Motion to Stay back in October 23, 2023, it erred in not moving to Stay the proceedings for the three remaining Defendants in the civil action. Currently, the case is still under investigation, although the federal indictment was dropped for Tavarez who is a principal in this matter. I am still in the process of reviewing thousands of pages of communications and reports. Under rule 60(a)1, was this an oversight or under 60(b)1, I believe it raises to the level of a mistake.

MOTION TO DISMISS ACTION DUE TO FRAUD UPON THE COURT

I respectfully ask the court to reconsider its decision to denying the Motion to Dismiss the action under Rule 60(b)3. Smart knowingly filed a claim that is based on falsehoods and has destroyed evidence to cover up his scheme to defraud the court. The July 29, 2024 deposition is basically a confession of his fraud. Yes, there is also perjury but the most important part is that he admitted to his own mendacity.

Showing conscious wrong, doing what can be properly be characterized as a deliberate scheme to defraud before relief from final judgment, is inappropriate. Whitney v. Forbes (1985) 7th Cir.

This matter does not only concern private parties. There are issues of great moment to the public.

Tampering with the administration of justice in the manner indisputably shown here involves far more than an injury to a few litigants. It is a wrong against this Court, the authorities, insurance company, bank, IRS, and institutions in which fraud cannot complacently be tolerated.

The public welfare demands that the agencies of public justice be not so impotent that they must always be mute and helpless victims of deception and fraud.

Before ruling on this Motion, I respectfully ask the court to conduct a fact finding session to help the court determine if the Plaintiff and counsel for the Plaintiff committed Fraud Upon the Court by submitting a renewed Motion for Default on September 19, 2024, and for his continued prosecution of this matter knowing he has confessed.

THEREFORE, I pray the Court grants the Motions and correct the errors of not ruling on the Motions previously submitted that caused so much harm. Mistakes were made, and ignoring and not correcting those mistakes would be an injustice. Allow me to join this action, assign a GAL, Set Aside the Judgment and let the truth prevail. 'The duty with this court encompasses not only the avoidance of error before it occurs, but the correction of error that may have occurred earlier in a proceeding.' Carlisle v. United States, 517 U.S. 416, 437 (1996).

Respectfully submitted,

Jesús Concepción

Jesús Concepción
Spartanburg County Detention Center

Kendry Tavarez
5 Mitchell Spring Court
Simpsonville, SC 29681

STATE OF SOUTH CAROLINA)
COUNTY OF Greenville)

Discovery Fresh Foods)
Plaintiff,)
vs.)
Jesus Concepcion)
Defendant.)

IN THE COURT OF COMMON PLEAS
____JUDICIAL CIRCUIT

CASE NO.: 2022 -CP- 230 - 0240

MOTION AND ORDER INFORMATION FORM AND COVERSHEET

25 OCT 21 PM 2:25
GREENVILLE COUNTY SC
KP

Plaintiff's Attorney:	Defendant's Attorney:
Sarah Timmons, Esq., Bar No. SC Bar No. 100007	Pro-Se, Bar No
Address: P.O. Box 9583 Greenvile SC 29604	Address:
Phone: (864) 290-9800 Fax	Phone: Fax
E-mail: Other:	E-mail: Other:

☑ **MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)**
☐ **FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)**
☐ **PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)**

SECTION I: Hearing Information

Nature of Motion: For Reconsideration
Estimated Time Needed: Court Reporter Needed: ☐ YES/ ☐ NO

SECTION II: Motion/Order Type

☑ Written motion attached
☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Jesus Concepcion — October 21, 2025
Signature of Attorney for ☐ Plaintiff / ☑ Defendant — Date submitted

SECTION III: Motion Fee

☑ PAID – AMOUNT: $ 25
☐ EXEMPT: (check reason)
☐ Rule to Show Cause in Child or Spousal Support
☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter:
☐ Other:

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.
☐ Other:

JUDGE CODE
Date: , 20

CLERK'S VERIFICATION

Collected by: KP
Date Filed: 10/21, 2025

☑ MOTION FEE COLLECTED: $ 25
☐ CONTESTED – AMOUNT DUE: $

SCCA 233 (11/2003)

APPENDIX A-16

Order denying reconsideration, entered October 30, 2025

Document label superimposed on following pages

ELECTRONICALLY FILED - 2025 Oct 30 8:46 AM - GREENVILLE - COMMON PLEAS - CASE#2022CP2300240

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2022CP2300240

DiscoverFresh Foods Inc
PLAINTIFF(S)

Jesus Concepcion 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:

Please see page 2.

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 10/29/2025 .

Kendry Solange Feliz
Kendry S Tavarez
National Risk Solutions LLC
Jesus Concepcion for Jesus Concepcion
Jesus Concepcion for Jesus Concepcion

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

ELECTRONICALLY FILED - 2025 Oct 30 8:46 AM - GREENVILLE - COMMON PLEAS - CASE#2022CP2300240

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.

This matter comes before the Court by way of Defendant Concepcion's Motion for Reconsideration ("the Motion") of the Order filed on October 14, 2025. The Motion was filed on October 21, 2025. After review of the record and consideration of the arguments presented in Defendant's Motion, the Court finds that no basis has been presented to Alter or Amend the October 14, 2025 Order as all matters that were raised in the Motion were considered in the October 14, 2025 Order. Therefore, Defendant's Motion is denied. Further, the Court has determined that no additional hearing or oral argument was needed to address this Motion.

It Is So Ordered.

ELECTRONICALLY FILED - 2025 Oct 30 8:46 AM - GREENVILLE - COMMON PLEAS - CASE#2022CP2300240

Greenville Common Pleas

Case Caption: DiscoverFresh Foods Inc , plaintiff, et al vs. Jesus Concepcion , defendant, et al

Case Number: 2022CP2300240

Type: Order/Electronic Form 4

So Ordered

s/ Honorable Perry H. Gravely, #2755

Electronically signed on 2025-10-29 17:08:29 page 3 of 3