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**Sep 10 2026**

**SC Court of Appeals**

**THE STATE OF SOUTH CAROLINA  
In The Court of Appeals**

**APPEAL FROM GREENVILLE COUNTY**  
Court of Common Pleas  
Honorable Perry H. Gravely, Circuit Court Judge

**Appellate Case No. 2025-002429  
Lower Court Case No. 2022-CP-23-00240**

DiscoverFresh Foods, Inc., Respondent,  
v.  
Jesús Concepción, Kendry S. Tavaréz a/k/a Kendry Solange Feliz, and National Risk Solutions,  
LLC, Defendants,  
of which Jesús Concepción is the Appellant.

**APPELLANT'S MOTION TO ALLOW LATE FILING OF FINAL REPLY BRIEF AND  
REQUEST THAT THE COURT ACCEPT THE FINAL REPLY BRIEF FOR FILING**

**MOTION**

Appellant Jesús Concepción, appearing pro se, respectfully moves under Rules 211, 240, 262, and 267, SCACR, for leave to file the attached Appellant's Final Reply Brief after the deadline identified by the Clerk. Appellant further requests that the Court accept and consider the Final Reply Brief tendered contemporaneously with this Motion. This request is made because the final-briefing sequence became confused after the Record on Appeal and Appellant's Final Brief were corrected and refiled, both sides experienced deadline or service-related confusion during the same final-briefing period, and Respondent has expressly stated that it does not object to the Court's consideration of Appellant's late Final Reply Brief.

**FACTUAL AND PROCEDURAL BACKGROUND**

The post-record procedural facts set out below are drawn from this Court's docket and materials already filed with or received by this Court, including the parties' correspondence and Respondent's late-filing motion. Appellant does not rely on undisclosed external facts for this request.

1. The appeal is currently in the final-briefing stage. Appellant is incarcerated at the Spartanburg County Detention Center and has proceeded without counsel in this appeal.
2. On June 10, 2026, Appellant served and filed his Initial Reply Brief. That brief responded to Respondent's Initial Brief and preserved Appellant's reply arguments before preparation of the final briefs.
3. The appellate docket later reflects filing of Appellant's Record on Appeal and Final Brief, followed by correspondence from the Court identifying deficiencies in the Record on Appeal. Appellant then submitted an Amended Record on Appeal and a corrected Final Brief. The amendments changed the pagination and required the final briefs to use the revised Record citations.
4. Respondent has itself described the resulting confusion. In Respondent's Motion Requesting Permission to Serve and File Respondent's Final Brief Outside Deadlines, Respondent states that it had been waiting for the corrected Record on Appeal so that its Final Brief would match the revised pagination, and that on August 6, 2026, counsel called the Clerk and was informed that Respondent's Final Brief was already late. Respondent then filed its Final Brief and explanatory correspondence that same day.
5. The Clerk issued correspondence dated August 28, 2026, advising Appellant that his Final Reply Brief was overdue. Appellant, who is incarcerated, did not actually receive that correspondence at the detention center until August 31, 2026.
6. During the same period, there was additional confusion concerning physical service of Appellant's papers on Respondent. Appellant's paper package had been sent to counsel but was returned after carrier delivery problems. Appellant then sent a replacement package and documented the attempted and replacement mailings with the Court and Respondent.

7. Respondent's counsel later acknowledged delivery problems involving UPS and FedEx at counsel's street address. Counsel asked that future physical mailings be directed to Timmons Brogdon Law Firm, LLC, P.O. Box 9583, Greenville, South Carolina 29604, and later confirmed that address to the Court and Appellant. Appellant is using that confirmed P.O. Box for service of this Motion and the Final Reply Brief by regular U.S. Mail.
8. Respondent subsequently filed its own motion seeking permission for the late filing of its Final Brief. In that motion, Respondent expressly states that it recently received notice that Appellant had also missed the deadline for his Final Reply Brief and that Respondent 'does not object to the Court's consideration of same.' Thus, Respondent has affirmatively represented that it does not oppose acceptance of Appellant's Final Reply Brief.
9. Appellant is tendering the Final Reply Brief with this Motion on September 9, 2026. The Final Reply Brief is not a new substantive reply. Consistent with Rule 211(b), it is identical in substance to Appellant's June 10, 2026 Initial Reply Brief, except that references have been revised to the Amended Record on Appeal and obvious typographical or citation errors have been corrected.
10. Appellant is also serving Respondent by U.S. Mail at the P.O. Box Respondent specifically confirmed for future physical mailings. The required \$50.00 motion filing fee is enclosed with Appellant's physical filing to the Court by money order.

### **MEMORANDUM OF LAW**

#### **I. RULE 240 AUTHORIZES THIS COURT TO CONSIDER THE REQUEST BY MOTION, AND THE REQUEST IS PROCEDURALLY COMPLETE.**

Rule 240, SCACR, governs motions filed in the appellate court. It requires a written motion stating the grounds for relief, compliance with Rule 267, a certificate or affidavit of service, and a memorandum with citation of authorities. Rule 240(d) requires the motion to be

filed with the Clerk and served on each party. This filing includes the grounds for relief, this memorandum, and a certificate of service. Appellant is also enclosing the required \$50.00 motion filing fee with the physical filing by money order.

Rule 262 permits filing by delivery, U.S. Mail, or electronic means established by order of the Supreme Court, and requires proof of service. Rule 262(c)(2) further provides that service by U.S. Mail is complete upon mailing when the document is properly addressed with sufficient first-class postage. Appellant is serving Respondent in that manner at the confirmed P.O. Box address.

## **II. THE FINAL-BRIEFING HISTORY SHOWS MUTUAL AND DOCUMENTED DEADLINE CONFUSION, NOT DELIBERATE DELAY.**

The circumstances are unusual because the final-briefing sequence was affected by corrections to the Record on Appeal and the corresponding need to revise Record citations. Respondent's own filing confirms that Respondent misunderstood the deadline while waiting for the corrected Record and learned of the problem only after contacting the Clerk. Appellant likewise received later notice that his Final Reply Brief was overdue. These events arose within the same final-briefing sequence and from the same corrected-record context.

The record of communications also shows that physical service problems were real rather than manufactured. Appellant documented unsuccessful carrier delivery, and Respondent later acknowledged problems with UPS and FedEx and supplied a P.O. Box for future mailings. Appellant does not offer these circumstances to assign fault. They are provided to give the Court a complete account of why the final-briefing period became administratively confusing for both parties.

The parties' transmittal papers also reflect minor clerical inconsistencies during this period. For example, Respondent's cover letter dated August 28, 2026 referred to its motion as

having been filed on August 8, 2026. Appellant likewise has had to correct dates, pagination references, and filing labels while conforming papers to the amended Record. Appellant does not present these clerical slips as substantive defects; they are mentioned only because they further demonstrate the mutual administrative confusion surrounding final briefing.

Appellant has continued attempting to comply with the Court's directions and is filing this Motion promptly after actually receiving the Clerk's August 28, 2026 overdue notice on August 31, 2026, and after the subsequent filing of Respondent's motion concerning its own late Final Brief. There is no intent to delay the appeal or obtain an unfair advantage.

Appellant acknowledges that the Final Reply Brief was not filed within the deadline identified by the Clerk. He therefore seeks formal leave through this Motion instead of asking the Court to treat informal correspondence as a substitute for the required filing.

**III. ACCEPTANCE OF THE FINAL REPLY BRIEF WILL NOT PREJUDICE  
RESPONDENT, AND RESPONDENT HAS EXPRESSLY STATED THAT IT DOES  
NOT OBJECT.**

Respondent will not be unfairly prejudiced by acceptance of the Final Reply Brief. Respondent has already served its Final Brief, Appellant's Initial Reply Brief has existed since June 10, 2026, and the tendered Final Reply Brief does not add new substantive arguments. Most importantly, Respondent expressly represented in its own late-filing motion that it does not object to the Court's consideration of Appellant's late Final Reply Brief. That express non-objection substantially removes any concern that acceptance would surprise or disadvantage Respondent.

Accepting the Final Reply Brief would also provide even treatment during a final-briefing period in which both parties have asked the Court to accept a late final-stage filing. Appellant respectfully asks only that the Court permit the appeal to proceed on the complete

final briefs rather than have the merits affected by the mutual procedural confusion described above.

**IV. THE TENDERED FINAL REPLY BRIEF COMPLIES WITH RULE 211(b) AND DOES NOT USE THE LATE-FILING REQUEST TO CHANGE THE APPEAL.**

Rule 211(b), SCACR, requires a final brief to be identical to the brief previously served under Rule 208, except that references may be revised to identify the location of material in the Record on Appeal and obvious typographical errors and misspellings may be corrected. Appellant has deliberately preserved the substance of the June 10 Initial Reply Brief. The tendered Final Reply Brief changes the title to identify it as the Final Reply Brief, updates Record citations to the Amended Record on Appeal, corrects obvious citation or typographical matters, and updates the certificates required for the present filing. It does not use this Motion as an opportunity to add new merits arguments.

This limitation further protects Respondent from prejudice and allows the Court to consider the same reply positions that were already served during initial briefing, now conformed to the final Record as Rule 211 contemplates.

**V. APPELLANT'S INCARCERATION AND PRO SE STATUS PROVIDE ADDITIONAL CONTEXT FOR THE DOCUMENTED COMMUNICATION AND MAILING DIFFICULTIES.**

Appellant does not contend that incarceration automatically excuses a missed appellate deadline. It is relevant, however, to the practical sequence documented here. Appellant cannot personally deliver filings, has limited ability to communicate and monitor deliveries, and must rely on prison procedures and outside mailing assistance. Those restrictions interacted with the corrected Record, the shifting final-briefing sequence, and the carrier problems acknowledged by Respondent. In the circumstances, allowing the late filing would permit the appeal to be decided

on the final briefs without rewarding or penalizing either side for the documented administrative confusion.

### **REQUEST FOR RELIEF**

For the foregoing reasons, Appellant respectfully requests that the Court: (1) grant leave to file Appellant's Final Reply Brief after the deadline identified by the Clerk; (2) accept and deem filed the Final Reply Brief tendered with this Motion on September 9, 2026; (3) permit the appeal to proceed on the final briefing submitted by the parties; and (4) grant such other and further relief as the Court deems just and appropriate. In the alternative, if the Clerk identifies any technical defect in the tendered filing or fee transmission, Appellant respectfully requests a short opportunity to cure that defect rather than rejection of the Final Reply Brief.

**RECEIVED**

**Sep 10 2026**

**SC Court of Appeals**

Respectfully submitted,

/s/ Jesús Concepción

Jesús Concepción, 524137-A5-38

Spartanburg County Detention Center

950 California Avenue

Spartanburg, South Carolina 29303

Telephone: Not available (incarcerated)

Pro Se Appellant

Dated: September 9, 2026

**CERTIFICATE OF SERVICE**

I certify that on September 9, 2026, I served a true and correct copy of this Appellant's Motion to Allow Late Filing of Final Reply Brief and Request that the Court Accept the Final Reply Brief for Filing on counsel for Respondent by depositing it in the U.S. Mail, properly addressed with sufficient first-class postage, as follows:

Sarah Anderson Timmons, Esquire

Timmons Brogdon Law Firm, LLC

P.O. Box 9583

Greenville, South Carolina 29604

sarah@timmonsbrogdon.com (courtesy electronic copy also sent September 9, 2026)

Counsel for Respondent DiscoverFresh Foods, Inc.

/s/ Jesús Concepción

Jesús Concepción