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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. Tavarez a/k/a Kendry Solange Feliz, and National Risk Solutions, LLC, Defendants,

of which Jesús Concepción is the Appellant.

APPELLANT·S FINAL REPLY BRIEF

Jesús Concepción, 524137-A5-38

Spartanburg County Detention Center

950 California Avenue

Spartanburg, South Carolina 29303

Pro se Appellant

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INTRODUCTION

For ease of reference, this Reply Brief uses "AIB" to refer to Appellant's Opening Brief, "RIB" to refer to Respondent's Initial Brief, "Tr." to refer to the October 6, 2025 hearing transcript, "SCRCP" to refer to the South Carolina Rules of Civil Procedure, "SCACR" to refer to the South Carolina Appellate Court Rules, and "GAL" to refer to guardian ad litem. [1]

"The fundamental requisite of due process of law is the opportunity to be heard," and that hearing must be afforded "at a meaningful time and in a meaningful manner." Goldberg v. Kelly, 397 U.S. 254, 267 (1970) (quoting Grannis v. Ordean, 234 U.S. 385, 394 (1914), and Armstrong v. Manzo, 380 U.S. 545, 552 (1965)). This appeal arises because Mr. Concepción, an incarcerated civil defendant imprisoned outside South Carolina when the case proceeded toward judgment, invoked the court's protection before final default judgment; filed stay motions before the October 2, 2024 final judgment; notified the court that incarceration, criminal-exposure concerns, and counsel abandonment restrained his ability to defend; and later sought Rule 17(c), Rule 55(c), and Rule 60(b) relief after the court itself recognized that those pre-judgment motions had not been heard before judgment. See R. pp. 21-26, 107-114, 151-163, 205-243.

Respondent principally answers with service, delay, default, waiver, and deference. RIB argues this is a "straight forward entry of default and default judgment," that any omission was "remedied" by a later hearing, that Rule 17(c) protection was unnecessary because Mr. Concepción filed papers and later appeared, and that his guilty plea defeats any meritorious defense. Those arguments are carefully presented, but they do not answer the constitutional

[1] "AIB" refers to Appellant's Opening Brief. "RIB" refers to Respondent's Initial Brief. "Tr." refers to the October 6, 2025 hearing transcript. "SCRCP" refers to the South Carolina Rules of Civil Procedure. "SCACR" refers to the South Carolina Appellate Court Rules. "GAL" refers to guardian ad litem.

defect. Service is not the same as meaningful adjudication. A mailbox is not a courtroom. A post-judgment hearing is not a timely pre-judgment protective procedure. And a later guilty plea cannot retroactively validate a multimillion-dollar civil judgment entered while unresolved stay motions and prisoner-protection concerns remained unadjudicated.

Mr. Concepción files this Reply Brief to respond to Respondent's Initial Brief, to correct Respondent's misreading of the record and authorities, and to show why the October 14, 2025 order should be reversed and the final default judgment vacated or, at minimum, remanded for a constitutionally adequate Rule 17(c), Rule 55(c), and Rule 60(b) determination.[2]

REPLY ARGUMENT

I. Respondent's brief confirms, rather than cures, the dispositive procedural defect: the pre-judgment stay motions were not heard before final default judgment.

Respondent's brief is skillfully organized around service, delay, default, and deference. Those are serious points, but they do not answer the actual appellate problem. This appeal is not about whether default is generally available. It is about whether a final default judgment may stand when the court entered judgment after an incarcerated out-of-state defendant had filed pre-judgment motions to stay, and the court later acknowledged those motions had not been heard before the judgment was finalized.

Respondent calls the case a "straight forward entry of default and default judgment." RIB p. 2. That framing is incomplete. The circuit court's own chronology prevents the case from

[2] Mr. Concepción does not waive any specific arguments to be made in response to Respondent's brief that are not herein offered. Instead, he relies on the arguments made in his Opening Brief and any oral argument made before this Honorable Court.

being treated as routine. The October 14 order states that Mr. Concepción filed "a Motion to Stay on June 7, 2023, after default was entered but before the Default Judgment was entered," and "a Second Motion to Stay on October 23, 2023," and further states that "no hearing had been afforded to Mr. Concepcion on any of these Motions" before the April 21, 2025 scheduling order. (R. p. 22; R. pp. 107-114, 207-208).

The April 21, 2025 Form 4 order is even more direct. It states that the October 2, 2024 default judgment "did not address Defendant Concepcion's Motion to Stay filed before the October 2, 2024 Order," and that it did not appear "that a hearing was held with proper notice to this defendant who had made an appearance." (R. p. 15). That order is not a technicality. It is the trial court's contemporaneous recognition that the final judgment entered before a noticed incarcerated defendant received the hearing the court believed should have occurred.

The transcript confirms the same thing. At the October 6, 2025 hearing, the court explained that Mr. Concepción filed motions on June 7, 2023 and October 23, 2023; that judgment was not entered until October 2, 2024; that the court "didn't see in the file where those motions to stay had ever been addressed"; and that "before the judgment could be finalized, those motions should have been heard." (R. p. 207, line 16-R. p. 208, line 1). The court then described the failure as "just kind of an oversight." (R. p. 208, line 1).

Respondent's principal answer is that Mr. Concepción filed papers and therefore had access. RIB pp. 3, 24-25. That argument proves the opposite. The filings show that Mr. Concepción invoked the court's protection. They do not show that the court adjudicated those requests at the constitutionally meaningful time: before final judgment. Due process is not satisfied by papers received and ignored until after the property-depriving judgment has already entered. The hearing must occur "at a meaningful time and in a meaningful manner," Armstrong, 380 U.S. at 552, and the court's own statements establish that the meaningful time was before judgment was finalized.

Respondent also says no hearing was requested. RIB pp. 5, 18, 24. That assertion is legally misplaced when measured against the status of the litigant and the nature of the pending motions. Mr. Concepción was in federal custody in New York, physically restrained, and proceeding without South Carolina civil counsel after retained counsel failed to appear. A pro se prisoner's inability to navigate local hearing-request mechanics cannot convert the court's failure to address pre-judgment motions into a waiver of constitutional protection. The April 21 order itself recognized the absence of a hearing as a problem, not as a harmless clerical omission.

Respondent's brief therefore confirms the central defect. It does not dispute that final judgment entered on October 2, 2024. It does not dispute that the June 7, 2023 and October 23, 2023 stay motions predated that judgment. It does not dispute that the court later scheduled a hearing because those motions had not been heard. Respondent simply asks this Court to treat those facts as harmless because service was proper and default had been entered. South Carolina law and due process require more.

II. Respondent's Rule 17(c) argument measures the wrong time and overreads waiver authorities.

Respondent's Rule 17(c) argument focuses on April 2025, when Mr. Concepción filed a formal motion for appointment of a guardian ad litem while housed in South Carolina. RIB pp. 26-28. That is the wrong temporal focus. The critical period is 2022 through October 2, 2024, when service occurred, default was entered, default-related papers were served, pre-judgment stay motions were filed, and final judgment was entered while Mr. Concepción was imprisoned outside South Carolina.

Rule 17(c), SCRCP, draws the very distinction Respondent blurs. It provides that "[a] person imprisoned outside this State shall appear by guardian ad litem in an action by or against him," while a person imprisoned inside South Carolina may be protected by appointment of a guardian ad litem or by being brought personally to trial under Rule 43(a). The rule is triggered by the physical restraint of imprisonment. Ex parte Foster explains that the rationale "is not mental deficiency, but the physical restraint of imprisonment." 350 S.C. 238, 565 S.E.2d 290. Respondent's repeated focus on competence therefore attacks a straw man. RIB pp. 26-28.

Respondent relies on McCuen, Green, and Bishop to argue waiver. Those cases show waiver can occur; they do not hold that waiver occurs whenever a prisoner mails pro se papers requesting protection. The distinction is dispositive. In McCuen, the prisoner was represented by counsel at all stages and appeared through counsel before waiting until the final hearing to seek a GAL. In Green, counsel appeared, answered, counterclaimed, and did not raise the guardian issue until the eve of trial. In Bishop, the respondent was himself an attorney and represented himself. Respondent's authorities therefore involved counsel, legal sophistication, or an actual litigation posture materially different from a federal detainee who hired counsel, was abandoned, filed stay motions from custody, and received no hearing before final judgment.

Gossett is the better guide because it addresses the protective function of Rule 17 in the default context. Gossett states that where an adverse judgment against a prisoner will affect present or future property rights, the court should ensure either that a guardian ad litem is appointed or that the inmate is brought to court before entry of default judgment for a determination of whether appointment is essential. 317 S.C. 82, 452 S.E.2d 6. The "spirit of the law demands no less." Id. This case involves a multimillion-dollar judgment affecting property rights and execution. It therefore falls squarely within Gossett's protective principle.

Respondent's waiver argument also conflicts with Respondent's own words. At the hearing, counsel acknowledged that Mr. Mussetto "never filed a motion for a continuance," "never filed a motion to lift the stay," and that "[i]t literally went radio silent at the very beginning, and we proceeded with this case." (R. p. 234, lines 1-5). That statement is significant. Respondent asks this Court to impose ordinary waiver consequences on a prisoner after acknowledging that retained counsel disappeared "at the very beginning" and Plaintiff proceeded anyway. Rule 17(c) and Rule 60(b) exist to prevent precisely this kind of formalism from producing a property judgment without meaningful protection.

Respondent says family members or others could have moved for a GAL. RIB pp. 27-28. But Gossett does not treat the prisoner's protection as solely the burden of lay relatives. The court must evaluate whether a guardian ad litem is essential under the circumstances, especially where property rights are at stake. The question is not whether someone could have filed a perfect motion sooner. The question is whether the court could enter final judgment after pre-judgment motions, notice of incarceration, and unresolved criminal-defense concerns without first providing the protective inquiry Rule 17(c) contemplates.

III. Rule 55(b)(1), Rule 4, and default-admission principles do not cure the failure to provide a meaningful protective procedure before final judgment.

Respondent argues that Rule 4 only required service of the summons and complaint and that Rule 55(b)(1) permitted a default judgment on a sum certain. RIB p. 25. That argument answers a point Mr. Concepción does not need to make. Mr. Concepción does not challenge physical service as the central appellate issue. (R. pp. 165-166, 246, 249). The question is what happened after service: pre-judgment motions, imprisonment outside South Carolina, counsel abandonment, Rule 17(c), and the absence of a hearing before final judgment.

Rule 55(b)(1) is not a constitutional bypass. It supplies a default-judgment mechanism where the procedural posture is otherwise valid. It does not nullify Rule 17(c), erase pending motions, or authorize a court to enter final judgment without addressing motions filed by an incarcerated defendant before judgment. Nor does Rule 4 answer the due process problem. Proper service is a beginning, not the end, of the constitutional inquiry when the defendant thereafter appears by motions and seeks protection before final judgment.

Respondent relies on default-admission principles, stating that default admits well-pleaded allegations. RIB p. 20. In an ordinary default case, that proposition may establish liability on properly pleaded claims. But it does not validate the procedure that produced the default judgment. It also does not answer whether the circuit court abused its discretion or committed legal error by denying relief after recognizing that pre-judgment motions had never been heard. A judgment cannot bootstrap its own validity by relying on consequences that flowed from the very procedural defect under review.

Respondent's authorities on default relief do not require affirmance. In re Trustgard, Sundown, Roberson, Hill, and related authorities address standards for good cause, excusable neglect, meritorious defense, prejudice, and abuse of discretion. They do not hold that a later hearing cures a final judgment entered after unaddressed pre-judgment motions by an incarcerated out-of-state defendant. They also do not hold that counsel abandonment, unresolved Rule 17(c) issues, and a court-recognized oversight are legally irrelevant under Rule 60(b).

Respondent invokes Hill for the proposition that lack of familiarity with legal proceedings does not excuse failure to monitor a case. RIB p. 25. Hill does not control this record. This case is not merely lack of familiarity. It involves physical restraint in federal custody; protective custody with limited phone access, no ordinary internet access, and limited attorney access; retained counsel who never appeared; pre-judgment stay motions; an April 21 order recognizing the default judgment did not address those motions; and a transcript admission that the motions should have been heard before judgment. Those facts move the case outside ordinary neglect.

Rule 60(b) is strengthened, not weakened, by Respondent's hearing concession. Counsel's statement that retained counsel "literally went radio silent at the very beginning" supports the argument that the failure to answer was not a simple litigation choice, and that the later denial of relief was controlled by an incomplete legal analysis. Tobias v. Rice recognizes that procedural fairness is implicated where a litigant is trapped between being treated as represented and unrepresented. BB&T v. Taylor confirms that default judgments are reversible when foundational legal requirements are not satisfied. Here, the foundational problem is the absence of meaningful adjudication before final judgment despite pending motions and prisoner-protection concerns.

Respondent's own chronology also reveals a narrower notice problem after final judgment. Respondent identifies personal service of the April 24, 2023 default-related papers and then states only that an order for final default judgment was issued on October 2, 2024. RIB pp. 4-6. Respondent later acknowledged that Mr. Concepción contended he was not served with the final default judgment, but answered that point only by saying he later filed a February 11, 2025 motion. That is not a substitute for timely written notice to an incarcerated pro se litigant after he had already placed the court and parties on notice that he was attempting to participate. The issue is not technical gamesmanship; it is the practical reason Rule 17(c), Rule 60(b), and due process matter in prisoner cases. A final judgment entered while pre-judgment motions remained unheard, followed by disputed notice to a physically restrained litigant, reinforces rather than defeats the need for vacatur or remand.

IV. Respondent's guilty-plea argument cannot retroactively validate the civil default judgment.

Respondent repeatedly injects the federal criminal case. RIB states that Mr. Concepción "pled guilty" and uses that point to argue there is no meritorious defense and that his effort to litigate "flies in the face of his guilty plea." RIB pp. 6, 14, 24-26. That argument should be rejected for three reasons.

First, a later guilty plea cannot retroactively cure a prior civil procedural defect. The judgment at issue was entered on October 2, 2024. Respondent's own brief states the guilty plea occurred on June 9, 2025, while also acknowledging that "the amount of monetary damages is still being litigated." RIB p. 6. A later criminal plea, especially one with disputed loss or restitution issues, cannot answer whether the civil court should have heard the June 7 and October 23 stay motions before entering final civil judgment.

Second, the plea does not prove the civil judgment amount or resolve Rule 17(c). Respondent obtained a civil judgment exceeding $6.5 million. Respondent cannot rely on a guilty plea to avoid the question whether that civil judgment was entered after a constitutionally adequate procedure. Even if some criminal liability is accepted, the civil issues include the amount, parties, defenses, counterclaims, third-party conduct, and the fairness of a default judgment entered while an incarcerated defendant's pre-judgment motions remained unresolved. Respondent's reliance on the plea is also materially incomplete. Mr. Concepción understands the gravity of referencing a pending criminal matter and does not ask this Court to adjudicate that matter in this civil appeal. But Respondent invoked the guilty plea to defeat the existence of a meritorious defense. Having done so, Respondent cannot fairly present a one-sided criminal snapshot while excluding the limited later context Mr. Concepción seeks leave to place before the Court through a proper supplemental-record procedure. Mr. Concepción represents that, after he pleaded guilty, he met with the Government and explained that Andrew Smart was aware of, authorized, oversaw, and benefitted from disputed transactions; that Ms. Tavarez, a named defendant in this civil action, was dismissed from the criminal indictment on October 1, 2025, on the eve of her scheduled trial, following further review of new information in the continuing investigation; and that sentencing has not occurred because the federal court permitted further inquiry into newly identified evidence and loss-related issues.

The later criminal developments are offered with restraint and only because Respondent placed the guilty plea at issue. Mr. Concepción represents that further review of criminal discovery, Mr. Smart's July 29, 2024 deposition testimony, witness information, and subpoenas authorized in early March 2026 directed to DiscoverFresh Foods, Inc. and Mr. Smart produced additional materials after the plea. Those matters are not offered to ask this Court to decide criminal culpability. They are offered only to show why Respondent's guilty-plea shortcut should be rejected or, if considered, why supplementation under Rule 212, SCACR, is necessary before Respondent's collateral narrative is used to defeat a civil due-process claim. Mr. Concepción has not been sentenced and recognizes that any statement about the criminal matter must be accurate and truthful. The narrower point remains controlling: the guilty plea does not establish that the civil default procedure was constitutional, does not establish the civil judgment amount, and does not foreclose a meritorious defense or counterclaim if the case is remanded for litigation on the merits.

Respondent's use of the criminal case therefore opens the door only to a limited and careful response. At the hearing, Mr. Concepción explained that he mentioned the indictment because Plaintiff's counsel presented it as an exhibit, and because the indictment of Ms. Tavarez, a named civil defendant, had been dismissed. (R. p. 234, lines 10-16). He further stated that the dismissal was based on the "evaluation of new information received in the continued investigation." (R. p. 214, lines 8-18; R. p. 219, lines 1-4). He also explained that he had only recently received access to additional materials because the government had his cellphone and that thousands of pages of text messages remained under review. (R. p. 214, lines 19-25; R. p. 215, lines 1-10).

Mr. Concepción does not ask this Court to decide the criminal case in this appeal. To the contrary, he objects to Respondent's attempt to use selected criminal-case references as a shortcut around the civil procedural record. If Respondent insists on using the guilty plea to defeat a meritorious-defense showing, fairness requires the Court either to disregard that collateral criminal narrative or allow supplementation under Rule 212, SCACR, so the Court is not left with a one-sided and materially incomplete criminal-case snapshot.

The better approach is narrower. The Court can reverse without resolving any criminal update. The civil judgment should be vacated or remanded because, before that judgment was entered, unresolved motions and Rule 17(c) concerns existed and were not heard. Respondent's guilty-plea argument is therefore a distraction from the dispositive constitutional chronology.

V. Respondent's prejudice and delay arguments do not overcome the court's acknowledged oversight.

Respondent argues prejudice because the case is old, expenses were incurred, discovery occurred, and DiscoverFresh is no longer operating. RIB pp. 25-26. Those facts may matter in an ordinary Rule 60(b) balancing analysis. But prejudice from litigating the merits is not the same as prejudice sufficient to preserve a judgment entered after a court-recognized failure to hear pre-judgment motions.

Nor does Respondent's assertion that DiscoverFresh is no longer operating, or that additional litigation would impose financial strain, supply a legal answer to the procedural defect. RIB pp. 25-26. The expense of litigating on the merits cannot preserve a final judgment entered after unresolved pre-judgment motions and prisoner-protection concerns were left unheard. The Court need not weigh collateral financial narratives. The narrower point is enough: prejudice cannot convert an unaddressed pre-judgment due-process problem into harmless error.

Respondent also emphasizes delay. But delay cannot be assigned entirely to Mr. Concepción when the court acknowledged that the June 7, 2023 and October 23, 2023 motions were filed before final judgment and were not heard. Respondent's delay argument omits the period during which Plaintiff proceeded toward final judgment while the motions remained unresolved. The April 21 order and hearing transcript show that the court, not merely Mr. Concepción, identified an unaddressed procedural gap.

Nor did the October 6, 2025 hearing cure the problem. The court stated at the outset that it was there for the motions to stay, vacate, and appoint a GAL, and later narrowed the proceeding when merits issues arose. (R. pp. 205-243). A hearing held after final judgment and after the burden has shifted to the prisoner under Rule 60(b) is not equivalent to the pre-judgment hearing the court said should have occurred. Respondent's "cure" theory would permit courts to enter judgment first, hear the prisoner later, and then deny relief because judgment already exists. That is not a meaningful time and meaningful manner.

Respondent deserves credit for presenting the strongest possible default narrative. But that narrative depends on treating the unanswered stay motions, Rule 17(c) concerns, and counsel abandonment as background noise. They are not. They are the case. The judgment should be reversed because the order below relied on waiver, delay, and default without giving controlling effect to the court's own findings that the pre-judgment motions were not heard before judgment.

CONCLUSION

This appeal is about timing, protection, and constitutional regularity. Mr. Concepción was an incarcerated civil defendant outside South Carolina. He retained counsel before his responsive pleading deadline, but counsel never appeared and, in Respondent's own words, "literally went radio silent at the very beginning." He then filed motions and notices seeking a stay and the ability to defend before the final default judgment was entered. The court later recognized that those motions had not been heard and that they should have been heard before judgment.

Respondent's arguments do not cure that defect. Service does not cure it. Rule 55(b)(1) does not cure it. Default-admission principles do not cure it. A later guilty plea does not cure it. A post-judgment hearing does not cure it. Rule 17(c), Rule 60(b), and due process required a meaningful protective procedure before the court converted default into a multimillion-dollar final judgment affecting property rights.

For these reasons, Appellant respectfully requests that this Court reverse the October 14, 2025 order, vacate the final default judgment, and remand with instructions that the circuit court provide Rule 17(c) protection or an equivalent protective hearing and then adjudicate any request for relief from default under the correct legal framework. In the alternative, Appellant requests remand for a full Rule 60(b) hearing that accounts for the pre-judgment motions, counsel abandonment, incarceration outside South Carolina, and the court-recognized failure to hear the motions before final judgment.

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 208(b)(5), SCACR, Appellant certifies that this Final Reply Brief complies with the page limitation applicable to reply briefs and does not exceed twenty-five pages, excluding the cover, table of contents, table of authorities, certificates, and any permitted attachments.

Pursuant to Rule 211(b), SCACR, this Final Reply Brief is identical in substance to the Reply Brief served and filed on June 10, 2026, except for revised references to the Record on Appeal and correction of obvious typographical or citation errors. The Final Reply Brief is tendered on September 9, 2026 together with Appellant's Motion to Allow Late Filing.

Respectfully submitted,

/s/ Jesús Concepción

Jesús Concepción, 524137-A5-38

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