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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GEORGETOWN COUNTY
Court of Common Pleas

The Honorable Benjamin H. Culberson, Presiding Circuit Court Judge
The Honorable William H. Seals, Jr., Presiding Circuit Court Judge
The Honorable William P. Keesley, Presiding Circuit Court Judge

Circuit Court Case No. 2022-CP-22-00650
Court of Appeals Case No. 2026-000265

Frank Henderson and Antioch GroupAppellants,

v.

Abundance Home Care and Tyrhonda Priest.....Respondents,

RESPONDENTS' RESPONSE TO APPELLANTS' REQUEST FOR CLARIFICATION

The May 27, 2026, Order of the Court of Appeals is clear. No clarification is needed. Appellants' Request for Clarification is a ruse to go back to the circuit court so that Appellants can improperly seek post-judgment discovery in a fishing expedition. Appellants' "request" is an attempt to find some evidentiary support for their Rule 60(b) motion, which they clearly know they have no basis for now.

Appellants filed a Request for Leave on March 4, 2026, and argued that leave should be granted to allow Appellants to file a Rule 60(b) motion for the circuit court to rule on. The Court of Appeals issued its Order on May 27, 2026, which granted leave for the limited purpose of allowing Appellants to file and serve their Rule 60(b) motion within thirty (30) days for the Circuit Court's consideration and also noting that "nothing in this order prevents the Circuit Court from hearing Appellants' pending motion to stay execution." *See* May 27, 2026, Order.

This is the Order of the Court of Appeals that is in place, the instructions are clear, and no clarification is needed.

The deadline for Appellants to file their Rule 60(b) motion was temporarily held in abeyance on June 26, 2026, pending mediation. After mediation resulted in an impasse, Appellants filed their new Rule 60(b) Motion on August 7, 2026. A hearing on Appellants' Rule 60(b) motion was scheduled for September 10, 2026, and Respondents filed their Response in Opposition to Appellants' Rule 60(b) Motion on September 8, 2026. All the issues had been fully briefed by the parties and were ready for the Circuit Court to hear and rule on.

At the September 10, 2026, hearing, Appellants' counsel represented for the first time to the Circuit Court that they could not proceed with their Rule 60(b) motion without first obtaining a ruling from the Circuit Court that the subpoenas they issued to Respondents' counsel and Appellants' former counsel were valid and enforceable.

Upon being informed that the Circuit Court's jurisdiction was strictly limited to hearing Appellants' Rule 60(b) Motion and Motion to Stay Execution remanded in the May 27, 2026, Order granting leave, and that it would not be hearing the motions pertaining to discovery and subpoenas, Appellants' counsel informed the Circuit Court that they could not proceed on their Rule 60(b) motion without first addressing Respondents' Motion to Quash and Motion for Protective Order which had been filed in response to the subpoenas improperly issued by Appellants' counsel.

5 THE COURT: And I can tell you, I can do one of two
6 things. I can go forward and hear the rule 60B motion and the
7 motion to stay execution only. Or if you want me to continue
8 this, you go back to the Court of Appeals and get them to
9 remand it for me to hear everything you want me to hear. I can
10 do that.

11 But right now, I don't have the authority to hear a motion
12 to quash a subpoena. I don't have the jurisdiction to hear
13 anything other than a rule 60B motion and the appeal is held in
14 abeyance pending the circuit court's ruling on the motion, the
15 60B motion. And then the footnote, nothing prevents the
16 circuit court from hearing the pending motion to stay
17 execution. So, if it's included in the motion to stay
18 execution, if it's included in the motion -- the rule 60B
19 motion for reconsideration or to vacate the judgment, then you
20 can argue it.

21 MS. TILLMAN: Okay. And -- and I'll tell you our rule 60
22 motion, if I look at it, includes a request to this court to
23 rule on that motion to quash first.

Exhibit A (*September 10, 2026, Hearing Transcript*), at 10, lines 5-23.

Appellants' counsel asserted that discovery was necessary prior to any hearing or ruling on the pending Rule 60(b) motion, despite the fact that Appellants have never filed any motion or requested leave to reopen discovery. The subpoenas issued by Appellants' counsel are completely improper, particularly the subpoenas that were issued and personally served on Respondents' counsel after Appellants' counsel had been explicitly put on notice they did not have authority to issue subpoenas and Respondents' counsel had requested the subpoenas issued by Appellants' counsel be withdrawn on multiple prior occasions. In addition, there is no open discovery under Rules 26 through 37, SCRCP and Appellants have never sought leave from the Court to conduct discovery. Furthermore, there is no pending motion from the Appellants in the

Circuit Court seeking discovery so no proper procedural vehicle exists for which discovery can be obtained by Appellants.

Appellants' counsel's statements to the Circuit Court at the September 10th hearing along with their arguments in their Request for Clarification filing with the Court of Appeals prove they do not have the evidentiary support or proof needed to support their numerous grounds for relief asserted under Rule 60(b). Instead, Appellants have made serious, unsupported accusations against Respondents' counsel, Appellants' former counsel, and the Circuit Court in Appellants' briefs and motions filed following the January 5, 2026, Order of Judgment, which they have acknowledged they have no evidentiary basis for.

As noted in the Form 4 Order issued on September 10, 2026, the hearing on Appellants' Rule 60(b) motion was continued over the objections of Respondents. Respondents objected to any continuance on the basis that the issue had been briefed at length by both parties and the Circuit Court had all the required information available to it to make a ruling on Appellants' Rule 60(b) Motion.

Appellants have played hide-the-ball with the scope of remand requested from this Court. Appellants' March 4, 2026, Request for Leave asked for leave to pursue Rule 60 relief. This Court granted leave for that limited purpose, and nothing more.

Appellants' actual objective surfaced at the September 10th hearing, when Appellants made it abundantly clear that they could not, or would not, proceed with having their Rule 60(b) motion be heard without first obtaining a ruling on Respondents' Motion to Quash and Motion for Protective Order, despite Respondents' requesting to proceed with the Rule 60(b) motion and acknowledging their pending motions did not need to be heard. In doing so, Appellants made it

apparent that the *real* relief they were seeking is “authority for Rule 60 discovery.” See **Exhibit A**, at 11, lines 3-4.

That relief is not available under the May 27, 2026, Order of this Court, under Rule 60(b), or under any other rule invoked by Appellants’ counsel when questioned by the Circuit Court for the authority supporting Appellants’ position.

Appellants’ Request for Clarification seeks something that the law does not allow—Appellants want to appeal the judgment and, at the same time, reopen the case, reopen discovery, and relitigate it in the Circuit Court. This Court should deny Appellants’ Request for Clarification and direct the Circuit Court to hear and decide Appellants’ Rule 60(b) motion on the record already before it.

ARGUMENT

I. There is No Procedural Mechanism that Permits the Post-Judgment Discovery Sought by Appellants.

Appellants appear to be arguing from a position that assumes their subpoenas are valid and enforceable, when in fact they are not. Appellants never filed a motion or request with the Circuit Court or Court of Appeals for leave to conduct post-judgment discovery and there is nothing authorizing Appellants to conduct post-judgment discovery. Discovery is closed under the Scheduling Order and SCRCR Rules 26 to 37, and judgment has been entered.

At the September 10th hearing, when questioned by the Court as to Appellants’ supposed authority allowing for post-judgment discovery, Appellants’ counsel first attempted to support their position by arguing that the Circuit Court had “wide latitude and discretion” to “grant authority for Rule 60 discovery.”

1 | feel like you're in -- in a procedural straight -- straight
2 | jacket and can't hear -- can't hear that motion to quash, can't
3 | grant authority for rule 60 discovery, which is what those
4 | subpoenas are premised on --
5 | THE COURT: You give me some authority, you give me case
6 | law, you give me a statute, you give me something that says I
7 | have the authority, I have the jurisdiction, to do that.
8 | MS. TILLMAN: And absolutely under rule 60, you -- this
9 | court has got wide latitude and discretion to do what -- what's
10 | in the interest of justice and --
11 | THE COURT: Give me the case that says that.
12 | MS. TILLMAN: -- can grant -- can grant discovery.
13 | THE COURT: Give me the case that says that.
14 | MS. TILLMAN: You know, it's not a case. It's the rule.
15 | The -- the rule --
16 | THE COURT: Show me in the rule where it says -- I've read
17 | the rule. I've read rule 60B.
18 | MS. TILLMAN: Right.
19 | THE COURT: Rule 60B and I don't see anything in rule 60B
20 | that gives me the discretion to order discovery

Exhibit A, at 11, lines 1-20.

Appellants' counsel then attempted arguing, "the other rule would be just fundamental due process." *Id.*, at lines 22-23.

When both of those arguments fell flat, Appellants' counsel pivoted to arguing that the post-judgment discovery sought by Appellants was authorized under the South Carolina Rules of Civil Procedure.

22 | MS. TILLMAN: And one other thing. There is -- there is a
23 | rule, and don't mind I don't have a rule book with me, that
24 | does allow discovery pending appeal.

Id., at 14, lines 22-23.

In a final attempt to rehabilitate their flawed position, Appellants' counsel cited to Rule 27(b), SCRCF, as the support for their position that their subpoenas were valid and discovery was allowed pending an appeal.

15 | You're not asking to take depositions.
16 | MS. TILLMAN: No. No we're asking I -- I mean, it's
17 | substantially the same thing.
18 | THE COURT: No, ma'am, it's not.
19 | MS. TILLMAN: All right.
20 | THE COURT: It's not. This deals with taking of
21 | depositions to perpetuate the testimony of a witness.
22 | MS. TILLMAN: And -- and we're seeking evidence to
23 | perpetuate the --
24 | THE COURT: And you're seeking discovery.
25 | MS. TILLMAN: Correct.

Id., at 16, lines 15-25.

Rule 27(b) only permits that “the court in which the judgment was rendered may allow the taking of the depositions of witnesses to perpetuate their testimony for use in the event of further proceedings of the court.” Rule 27(b), SCRCF. Here, there is no testimony that needs to be perpetuated, no witnesses who are likely to become unavailable or incapacitated in the event such testimony is needed at a later date, and more importantly, the subpoena production sought by Appellants falls squarely outside the narrow exception to post-judgment discovery provided in Rule 27(b), which rests in the discretion of the Circuit Court.

Appellants' counsel further clarified the real relief Appellants are seeking by saying that it would be Appellants, “*preference would be to continue this hearing today and to go to the Court of Appeals and just get clarification as to whether or not we're entitled to that discovery pending appeal.*” See **Exhibit A**, at 17, lines 15-18 (*emphasis added*).

1 THE COURT: This is depositions. They would have said
2 discovery. They would have said discovery is allowed.
3 MS. TILLMAN: I mean would -- would and -- and just to
4 play devil's advocate, certainly we could issue a deposition
5 duces tecum, which would be the same thing. I mean, if -- if
6 we're going to be strict constructionists, it's --
7 THE COURT: How is --
8 MS. TILLMAN: It's not --
9 THE COURT: How is that perpetuating --
10 MS. TILLMAN: -- substantially different? It's not
11 substantially different to seek evidence. And I'll tell you
12 what the Court of Appeal certainly wants here is a fully
13 developed record. And if --if your Honor feels confined by the
14 rule 60 and -- and doesn't think that it's got the discretion
15 to rule on those -- that pending motion to quash, then our
16 preference would be to continue this hearing today and to go to
17 the Court of Appeals and just get clarification as to whether
18 or not we're entitled to that discovery pending the appeal.

Id., at 17, lines 1-18.

Appellants attempt to remedy the lack of authority for their meritless position that they are entitled to post-judgment discovery in their Request for Clarification where they reiterated their primary objective of obtaining authority to conduct discovery numerous times throughout:

- “This Court should clarify that jurisdiction currently resides with the circuit court for hearing *pending motions pertinent to Appellants’ Rule 60 Motion* and Motion to Vacate Receivership, *including for deciding the question of whether Appellants are entitled to the discovery sought within the attached subpoenas to their former attorney and Respondents’ attorney.*” *Appellants’ Request for Clarification*, at 3 (*emphasis added*).
- “But if the circuit court *lacks authority from this Court to resolve the pending motion to quash, it cannot determine what evidentiary record is properly available for adjudication of the Rule 60(b) Motion.*” *Id.*, at 4 (*emphasis added*).

- “Appellants respectfully request that this Court clarify its May 27 Order *to permit the circuit court to decide ancillary proceedings necessary to resolve the Rule 60(b) motion.*” *Id.*, at 4 (*emphasis added*).

“Ancillary proceedings” is the creative name Appellants have given the sought-after discovery that they could not defend at the September 10th hearing.

In their Request for Clarification, Appellants go on to assert that they *could* have filed an independent action for relief from judgment rather than contest the judgment as they have, and *if* they filed an independent action they would in theory be entitled to discovery, therefore they should be allowed to conduct discovery here. *See id.*, at 4-5. However, there is no procedural mechanism that exists for the post-discovery sought by Appellants and their independent-action argument does not create the mechanism they lack at law.

Appellants did not file an independent action. Appellants asked for leave to proceed in this appealed case, received the limited leave they requested, and now argue they should be permitted the post-judgment discovery that they imagine an independent action would have allowed. Appellants chose the procedural vehicle of a Rule 60(b) motion to contest the judgment and are thus bound by the limited leave they requested and were granted by this Court to address the specific matters remanded for the Circuit Court to rule on.

The bottom line is there is no procedural mechanism that gives Appellants the ability to conduct discovery after the fact, particularly in this context when Appellants’ counsel has clearly acknowledged that the impermissible discovery sought is *needed* for a “fully developed record” for the Court of Appeals Appellants’ Rule 60(b) grounds for relief. *See Exhibit A*, at 17, lines 10-18.

II. Appellants’ Arguments at the September 10th Hearing and in Appellants’ Request for Clarification Effectively Concedes that Appellants Cannot Carry Their Burden of Proof for Relief Under Rule 60(b).

Appellants’ Request for Clarification correctly recites the evidentiary burden imposed on a movant seeking relief from judgment pursuant to Rule 60(b), SCRCP. *See Bowers v. Bowers*, 304 S.C. 65, 403 S.E.2d 127 (Ct. App. 1991) (holding, “[t]he movant in a Rule 60(b) movant has the burden of presenting evidence proving the facts essential to entitled him to relief”). This evidentiary burden is non-delegable and not one that Appellants can defer or condition on the possibility of future discovery. In *Bowers v. Bowers*, the Court of Appeals affirmed this rule, citing the principle drawn from 46 Am. Jur. 2d Judgments § 780 that no court has authority to open or vacate a judgment without *some material evidence* to support the claims on which the application for relief depends. *See id.*, at 67-68 (*emphasis added*).

The arguments made by Appellants’ counsel both on the record at the September 10th hearing and in their Request for Clarification concedes that Appellants do not have grounds or evidence to support the relief sought through their Rule 60(b) Motion.

Simply put, if Appellants cannot make the requisite evidentiary showing that they are entitled to relief under Rule 60(b) based on the record and information available to them, then their Rule 60(b) motion should be denied. When a movant cannot proceed without discovery that is itself procedurally improper, and when the information sought is already part of the existing record, then the Rule 60(b) motion is subject to denial on multiple independent grounds. Appellants have not identified any defect in the May 27, 2026, Order of this Court. They have only identified their failure of proof, which is an independent ground to deny relief, not to reopen the case.

III. The Rule 60(b) Issues Have Been Fully Briefed and the Evidentiary Record is Fully Developed for a Ruling on Appellants' Motion.

Appellants have creatively framed their indirect request to conduct post-judgment discovery by arguing that a ruling on Respondents' Motion to Quash and Motion for Protective Order is a prerequisite to any hearing or ruling on Appellants' Rule 60(b) motion.

Appellants' counsel articulated four (4) "really significant reason[s]" for their insistence that Respondents' Motion to Quash and Protection from Discovery be ruled on prior to the Rule 60(b) motion. Those reasons being: (1) "whether Appellants received legally sufficient notice of the default hearing," (2) "whether [Appellants'] former attorney abandoned them at a dispositive stage," (3) "whether the withdrawal orders were prepared and revised and submitted without our clients['] informed consent," and (4) "whether the default judgment was procured through material misrepresentation and concealment." See **Exhibit A**, p. 8; lines 18-25 through p. 9; lines 1-2.

The record is fully developed with respect to these issues, and they have been briefed *extensively* in both Respondents' Response in Opposition of Appellants' Request for Leave filed on March 23, 2026, and in Respondents' Response in Opposition to Appellants' Rule 60(b) Motion filed on September 8, 2026.

Appellants had legally sufficient notice of the December 15, 2025, Damages Hearing and failed to appear. Appellants were not "abandoned" by their prior counsel, and any claims of abandonment are fatally flawed based on Appellant Henderson himself signed not one, but two, Consent Orders relieving his prior counsel. The Amended Consent Order was done solely to ensure that this case was not delayed further by Appellants' decision to release their prior counsel less than two (2) months before the damages hearing, given Appellants' long history of dilatory tactics throughout this litigation. Additionally, Appellants reviewed both the original and

amended Consent Orders prior to signing off on each of them. Lastly, any claims that the default judgment was procured through material misrepresentation and concealment are nothing more than baseless slander, particularly when considering it was Appellants who were sanctioned and had their pleadings stricken for their repeated misconduct and violation of court orders.

IV. The Relief Sought by Appellants Undermines the Finality of Judgments and Belabors Both the Circuit Court and Court of Appeals.

Appellants had an opportunity to have their post-judgment motions heard by the Circuit Court back in February. On January 30, 2026, Appellants post-judgment motions were set to be heard on February 12, 2026. Despite having a hearing date scheduled, Appellants made the voluntary decision to file their Notice of Appeal, which divested the Circuit Court of jurisdiction to hear the motions and they did so despite the fact that the appellate deadline had been tolled based on Appellants' pending motions, which included a Rule 59 Motion.

After this case was on appeal, Appellants then sought and were granted leave from this Court to have their Rule 60(b) motion heard. At the hearing for their Rule 60(b) motion, Appellants asked for a continuance to get "clarification" on what the circuit court had jurisdiction to rule on, representing that they could not have a "fully developed record" or proceed on the grounds for their Rule 60(b) motions until they had a ruling on whether or not they could conduct post-judgment discovery.

Appellants have filed their Request for Clarification based on a procedural quagmire of their own making, and the requested relief will only result in more challenges and delays every time Appellants do not get their way.

If the Circuit Court authorizes post-judgment discovery, Appellants will surely seek additional time to obtain discovery and recast their Rule 60(b) arguments again, while Respondents will challenge any permitted discovery for lack of legal or procedural authority. On

the other hand, if the Circuit Court grants Respondents' Motion to Quash and Motion for Protective Order (because discovery has ended and Appellants have not filed a motion or obtained leave to reopen discovery) then Appellants will undoubtedly challenge that ruling in either the Circuit Court, this Court, or both. Either way, expanding the scope of the remand and giving Appellants the opportunity to argue for post-judgment discovery, directly or indirectly serves the same ultimate purpose—delay—all in Appellants' search for some 'smoking gun' that is not in the record because it does not exist.

Respondents forecasted this exact course of action when they opposed Appellants' initial request for leave. *See Respondents' Response in Opposition to Appellants' Request for Leave*, at 18 (March 23, 2026) (stating, in part, "Appellants' new counsel has run amuck issuing subpoenas without proper authority, filing affidavits of individuals who were never identified in Appellants' original or supplementary discovery responses, and filing every imaginable post-trial and appellate motion in an attempt to delay the execution of this judgment *and doctor the record with what Appellants contend is "new evidence" for whenever the Court [of Appeals] hears this matter*) (*emphasis added*). Appellants' Request for Clarification is Respondents' prediction come true. Appellants are still searching for their "new evidence", and their Request for Clarification asks this Court to effectively authorize Appellants to hold the appeal in abeyance indefinitely.

CONCLUSION

For the reasons set forth herein, Respondents respectfully request the court deny Appellants' Request for Clarification to the extent it seeks to remand jurisdiction so that Appellants can attempt to reopen discovery, relitigate the merits after the fact, or to address any other issues that fall outside of the May 27, 2026, Order of this court granting leave. The Order issued by this Court on May 27, 2026, was clear and unambiguous in its direction, and this Court should order than Appellants' Rule 60(b) motion be ruled on by the Circuit Court so that this

appeal can proceed in a timely matter without further delays or requests by Appellants to remand issues to the Circuit Court that could have been ruled on prior to Appellants' Notice of Appeal.

Respectfully Submitted,

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October 8, 2026
Greenville, South Carolina

EXHIBIT A

STATE OF SOUTH CAROLINA
COUNTY OF GEORGETOWN
IN THE COURT OF COMMON PLEAS
C.A. NO. 2022-CP-22-00650

FRANK HENDERSON, ET AL

PLAINTIFFS,

VS.

INFINITY HOME CARE, ET AL

DEFENDANTS.

MOTION HEARING
BEFORE THE HONORABLE BENJAMIN H. CULBERTSON

DATE: SEPTEMBER 10, 2026
LOCATION: SOUTH CAROLINA CIRCUIT COURT 15
TRANSCRIBED BY: ALI BEATTY

APPEARANCES:

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1 THE COURT: All right, the next one I have, and the only
2 one I have remaining on this morning's roster is
3 2022-CP-22-00650 Frank Henderson and others vs Infinity Home
4 Care. Did anybody have anything on the roster other than that?
5 All right, going on that one. Please state for the record your
6 names and who you represent.

7 MR. ARIAIL: Your Honor, I'm Mills Ariail. We're on
8 behalf of Abundance Home Care. We're the Defendant in the
9 case. I don't know if you want us to sit over there,
10 Plaintiff's over here. Wherever.

11 THE COURT: It doesn't matter.

12 MR. ARIAIL: Doesn't matter? Okay.

13 THE COURT: It's however y'all do it.

14 MR. ARIAIL: That's fine.

15 THE COURT: All right.

16 MR. ARIAIL: And I've got Mr. Mihalic with me, Justin
17 Mihalic. He's my associate.

18 THE COURT: All right.

19 MS. TILLMAN: Good morning your honor. I'm Ainsley
20 Tillman. This is Wes Few. We're here today on behalf of the
21 Plaintiffs the Antioch Group LLC and Frank Henderson.

22 THE COURT: All right. Now I see -- my roster says a
23 motion to quash that was filed on March 18th, a motion to
24 vacate that was filed on May 29th, a motion to say execution
25 that was filed on May 29th, a motion to vacate pursuant to rule

1 60 that was filed on August 7. Note the case is on appeal and
2 the order from the Appellate Court remands the case for a rule
3 60B motion to be filed within 10 days of March 27th, 2026.

4 MR. ARIAIL: Correct.

5 THE COURT: So it does say nothing prevents me from
6 hearing their pending motion to stay execution. So I guess
7 that's the motion to stay execution filed May 29th?

8 MR. ARIAIL: Correct your Honor.

9 MS. TILLMAN: Yes your Honor. And -- and just as a little
10 more context, you've got two -- two of the orders maybe. I'm
11 guessing just looking from a distance in your hand.

12 THE COURT: Well no that's just the signature page.

13 MS. TILLMAN: Okay. So you've got that May order from the
14 Court of Appeals. There's that -- there's actually some, if
15 you pull up the Appellate Court docket, there were some
16 subsequent filings where we moved for continuance on the 10 day
17 deadline. Court of Appeals granted us a continuance, held the
18 case in abeyance for a little while because we were going to
19 mediate it.

20 And -- and we actually did mediate in Charleston in early
21 August with Nick Felix. It was unsuccessful. So then the
22 Court of Appeals lifted the temporary stay, and we went ahead
23 and filed our motion. That's the motion that you see that was
24 filed in August.

25 THE COURT: All right, so I'm here on the motion to stay

1 execution file May 29th and the motion to vacate pursuant to
2 Rule 60 filed August 7th, correct?

3 MS. TILLMAN: Yes that's --

4 MR. ARIAIL: And then --

5 MS. TILLMAN: And -- yes. There -- yes. And the -- the
6 motion -- and just to make things even more procedurally
7 complicated to the extent it matters the -- the August Rule 60
8 motion incorporates or there was a motion filed way back in
9 January I think of 2020, it would have been 2026. There was a
10 post-trial motion, including Rule 60 grounds that was never
11 heard by the court as well. We pretty much --

12 THE COURT: Well that -- that --

13 MS. TILLMAN: -- reiterate those.

14 THE COURT: So that's included in your August 7th?

15 MS. TILLMAN: It's -- it's included -- it's -- it's
16 included in our August 7th --

17 THE COURT: Okay.

18 MS. TILLMAN: -- motion. But I will say we -- we
19 incorporate the exhibits and all that just because e-filing
20 them all over again is --

21 THE COURT: So the January motion -- the August 7th motion
22 subsumes or consumes or includes the January motion?

23 MS. TILLMAN: That's correct.

24 THE COURT: Okay.

25 MS. TILLMAN: Yes your Honor.

1 MR. ARIAIL: Your Honor the -- the issue with the January
2 motion. I just want to put it out there is. It's a kitchen
3 seat type of motion includes a rule 59, 52, 54. All those
4 things are my reading of the Court of Appeals, we're here for
5 the rule 60 motion to stay.

6 So I didn't want any issues in regards to the -- the
7 record to say that we went forward with any 59 or 52 or 54. In
8 addition, the only affidavit that was attached to that initial
9 one was Mr. Frank Henderson's affidavit. The other affidavits
10 have just been filed over time throughout the proceedings. So,
11 I -- I -- I don't even know if they weren't attached to this
12 current motion.

13 THE COURT: I don't know. I just know in the last couple
14 of days, it's been the last week I've got close to 600 pages.

15 MR. ARIAIL: Yeah, I know.

16 THE COURT: And I can tell you all right now I have not
17 read.

18 MR. ARIAIL: I got you.

19 THE COURT: So, you're going to have to argue your motion
20 --

21 MR. ARIAIL: Okay.

22 THE COURT: -- and that's it. But I agree with you. This
23 is just the rule 60B motion --

24 MR. ARIAIL: Correct.

25 THE COURT: -- and the motion to stay execution --

1 MR. ARIAIL: Okay.

2 THE COURT: -- filed May 29.

3 MS. TILLMAN: And -- and also your Honor -- and -- and
4 I'll agree with all that. The relief that we're seeking today
5 is -- is not altering or amending the judgment. It's just that
6 it would be vacated. So that's rule 60.

7 THE COURT: Okay.

8 MS. TILLMAN: But procedurally, I think also on the docket
9 is Mr. Ariail's motion to quash and for protection for
10 discovery. When --

11 MR. ARIAIL: That was placed on there without -- I mean,
12 it's not allowed in the rules to be able to do that from what I
13 understand the Court of Appeals order.

14 THE COURT: Yeah.

15 MS. TILLMAN: Well --

16 THE COURT: That's filed in March. We're not hearing
17 that.

18 MS. TILLMAN: Well and -- and I'd ask your Honor to hear
19 it for a really significant reason. And that is that the --
20 the basis for our rules 60 motion includes questions of whether
21 the Plaintiffs received legally sufficient notice of the
22 default hearing, whether the Plaintiffs former attorney
23 abandoned them at a dispositive stage, whether the withdrawal
24 orders were prepared and revised and submitted without our
25 clients informed consent and whether the default judgment was

1 procured through material misrepresentation and concealment.

2 And -- and I'll tell you that --

3 THE COURT: Folks let me (indiscernible).

4 MS. TILLMAN: -- the two people who have the best
5 information on that --

6 THE COURT: I understand.

7 MS. TILLMAN: Yeah.

8 THE COURT: And I don't mean to interrupt you, but this
9 case is on appeal.

10 MS. TILLMAN: Correct.

11 THE COURT: Jurisdiction lies with South Carolina Court of
12 Appeals. I can only hear what is remanded to me for here.

13 MS. TILLMAN: Procedurally, the entire case has been
14 remanded to you and that -- that the --

15 THE COURT: Give me the order that remands the entire
16 case.

17 MS. TILLMAN: And that's the -- the -- the May order and
18 here's -- here's the thing.

19 THE COURT: Here's the order. Tell me where it remands
20 the entire case for hearing.

21 MS. TILLMAN: It's remanded -- it's remanded for the rule
22 60 motion and what -- what I will tell you is the basis for the
23 rule 60 motion is our due process issues. And the two parties
24 who have the best information about those due process issues
25 are our own attorney -- Our own attorney. And -- and this --

1 I'm not even sure that this should be an argument. We sent it
2 -- we had to send it --

3 THE COURT: Okay. And I --

4 MS. TILLMAN: Yeah -- to our --

5 THE COURT: And I can tell you, I can do one of two
6 things. I can go forward and hear the rule 60B motion and the
7 motion to stay execution only. Or if you want me to continue
8 this, you go back to the Court of Appeals and get them to
9 remand it for me to hear everything you want me to hear. I can
10 do that.

11 But right now, I don't have the authority to hear a motion
12 to quash a subpoena. I don't have the jurisdiction to hear
13 anything other than a rule 60B motion and the appeal is held in
14 abeyance pending the circuit court's ruling on the motion, the
15 60B motion. And then the footnote, nothing prevents the
16 circuit court from hearing the pending motion to stay
17 execution. So, if it's included in the motion to stay
18 execution, if it's included in the motion -- the rule 60B
19 motion for reconsideration or to vacate the judgment, then you
20 can argue it.

21 MS. TILLMAN: Okay. And -- and I'll tell you our rule 60
22 motion, if I look at it, includes a request to this court to
23 rule on that motion to quash first.

24 THE COURT: Well I can't.

25 MS. TILLMAN: Okay. Okay. And -- and you know if you

1 feel like you're in -- in a procedural straight -- straight
2 jacket and can't hear -- can't hear that motion to quash, can't
3 grant authority for rule 60 discovery, which is what those
4 subpoenas are premised on --

5 THE COURT: You give me some authority, you give me case
6 law, you give me a statute, you give me something that says I
7 have the authority, I have the jurisdiction, to do that.

8 MS. TILLMAN: And absolutely under rule 60, you -- this
9 court has got wide latitude and discretion to do what -- what's
10 in the interest of justice and --

11 THE COURT: Give me the case that says that.

12 MS. TILLMAN: -- can grant -- can grant discovery.

13 THE COURT: Give me the case that says that.

14 MS. TILLMAN: You know, it's not a case. It's the rule.
15 The -- the rule --

16 THE COURT: Show me in the rule where it says -- I've read
17 the rule. I've read rule 60B.

18 MS. TILLMAN: Right.

19 THE COURT: Rule 60B and I don't see anything in rule 60B
20 that gives me the discretion to order discovery
21 (indiscernible).

22 MS. TILLMAN: All right. And -- and the -- the other rule
23 would be just fundamental due process. We're entitled to our
24 attorneys file. And -- and again --

25 THE COURT: And I'm not disputing that.

1 MS. TILLMAN: Yeah.

2 THE COURT: I'm just telling you, the magistrate can't
3 grant it to you. The sheriff can't bring it to you. They
4 don't have jurisdiction. I don't have jurisdiction. You got
5 to go to the Court of Appeals, and the Court of Appeals has to
6 authorize that.

7 MS. TILLMAN: Okay.

8 THE COURT: Or you have to get the Court of Appeals to
9 remand it to me to make a decision. Once the notice of intent
10 to appeal is filed, jurisdiction leaves the circuit court and
11 goes to the Court of Appeals.

12 MS. TILLMAN: Well it -- it -- and -- and I'll tell you,
13 my preference is to go back to the Court of Appeals and just
14 ask it for clarification on that. But I will also tell you
15 that jurisdiction goes to the Court of Appeals on the matters
16 that are the subject of the notice of appeal. And --

17 THE COURT: I agree.

18 MS. TILLMAN: And this rule 60 motion is not the subject
19 of a notice of appeal because obviously what -- your Honor
20 hasn't ruled on it yet. And so you do have jurisdiction over
21 all matters that are not affected by the appeal. And, you know
22 the -- that's -- that's the rule 60 motion that --

23 MR. ARIAIL: Rule 59 --

24 THE COURT: Well, I mean, you're right, but a pending
25 motion would never be the subject of an appeal.

1 MS. TILLMAN: Correct.

2 THE COURT: But yet there's case law that says I cannot
3 consider a -- a case that's on appeal unless it's remanded. I
4 mean they -- if they have to remand for me to deal with the
5 motion to reconsider.

6 MS. TILLMAN: Correct. And -- and they have done that and
7 -- and then, you know, your decision on that motion not only to
8 reconsider, but for the set aside the judgment, you've got
9 jurisdiction over that. Part of it is this question of whether
10 we're entitled to or really rather whether Mr. Ariail is
11 entitled to move to quash our subpoena to our own attorney,
12 which he's not.

13 THE COURT: Excuse me for interruption. When did this
14 come in?

15 CLERK: I'm sorry.

16 THE COURT: When did this come in?

17 CLERK: Sorry. I have to put this down a little bit.

18 MS. TILLMAN: I think that -- there's a letter that --

19 MR. ARIAIL: Is that the new September 9th letter Judge?

20 THE COURT: No, this is a June 26 --

21 CLERK: I just printed it from the --

22 THE COURT: The Court of Appeals, the appeal is held in
23 abeyance for 30 days, but the 30 days has expired from the
24 settlement. This is where we're doing the mediation?

25 MR. ARIAIL: Yeah your Honor --

1 MS. TILLMAN: Yes.

2 MR. ARIAIL: What happened is I can give you a little
3 background in regards to it. We did the mediation. They send
4 a letter in. The Court of Appeals said it was no longer held
5 in abeyance.

6 Ms. Tillman sent a letter to the Court of Appeals, letting
7 them know we're still having the 60B motion heard. They then
8 sent a letter, actually, I think it was yesterday or the day
9 before, "after a further review of this file, it appears this
10 case should remain held in abeyance while the circuit court
11 rules on the pending 60B motion. Appellants must immediately
12 notify the court where it's a circuit issue of the ruling so
13 the appropriate timelines may be established." They've sent
14 this by appealing it.

15 They asked for the leave to have this 60B heard. They got
16 their relief granted. And now we show up here and we're ready
17 to proceed on the 60B, which the Court of Appeals is pressing
18 us to have heard. It's my position we need to go forward and
19 get this resolved and then they can request leave for the other
20 things. But we're here today based on what they requested from
21 the Court of Appeals and what they have been granted.

22 MS. TILLMAN: And one other thing. There is -- there is a
23 rule, and don't mind I don't have a rule book with me, that
24 does allow discovery pending appeal.

25 THE COURT: All right well until you show me the rule and

1 show me the authority, --

2 MS. TILLMAN: I want to say it's --

3 THE COURT: (indiscernible).

4 MS. TILLMAN: -- 37 off the top of my head.

5 MR. FEW: Twenty seven.

6 MS. TILLMAN: Twenty seven.

7 MR. ARIAIL: Twenty seven and I've provided that to Mr.
8 Few. That is not applicable in this case. He knows that and I
9 told him forty --

10 THE COURT: Well let me see what rule 27 says. Does
11 anybody have a rule book, or I can look it up?

12 MR. ARIAIL: Your Honor --

13 THE COURT: Rule 27: a person who desires to perpetuate
14 his own testimony or that of another person regarding any
15 matter that may be cognizable in any court of the state may
16 file a verified petition and the Court of the Circuit of the
17 Residence. Petition shall be entitled. We're not dealing --
18 notice --

19 MR. ARIAIL: I think it's -- your Honor, I think it's A
20 four B.

21 THE COURT: "If an appeal has been taken from a judgment
22 of a court or before the taking of an appeal, if the time,
23 therefore, has not expired, the court in which the judgment was
24 entered may allow the taking of the depositions of witnesses to
25 perpetuate their testimony for use in the event of further

1 proceedings in the court. In such case, the party who desires
2 to perpetuate the testimony may make a motion in the court for
3 leave to take the depositions upon the same notice and service
4 thereof as if the action was pending in the circuit court.
5 Motion shall show the names and addresses of the persons to be
6 examined and the substance of the testimony which he expects to
7 elicit from each the reasons for perpetuating their testimony.
8 If the court finds that the perpetuation of the testimony is
9 proper to avoid a failure or delay of justice, it may make an
10 order allowing the depositions to be taken. It may make orders
11 of the character provided for by Rules 34 and 35, thereupon,
12 the depositions may be taken and used in the same manner and
13 under the same conditions as are prescribed in these rules for
14 depositions taken in actions pending in the circuit court."
15 You're not asking to take depositions.

16 MS. TILLMAN: No. No we're asking I -- I mean, it's
17 substantially the same thing.

18 THE COURT: No, ma'am, it's not.

19 MS. TILLMAN: All right.

20 THE COURT: It's not. This deals with taking of
21 depositions to perpetuate the testimony of a witness.

22 MS. TILLMAN: And -- and we're seeking evidence to
23 perpetuate the --

24 THE COURT: And you're seeking discovery.

25 MS. TILLMAN: Correct.

1 THE COURT: This is depositions. They would have said
2 discovery. They would have said discovery is allowed.

3 MS. TILLMAN: I mean would -- would and -- and just to
4 play devil's advocate, certainly we could issue a deposition
5 *duces tecum*, which would be the same thing. I mean, if -- if
6 we're going to be strict constructionists, it's --

7 THE COURT: How is --

8 MS. TILLMAN: It's not --

9 THE COURT: How is that perpetuating --

10 MS. TILLMAN: -- substantially different? It's not
11 substantially different to seek evidence. And I'll tell you
12 what the Court of Appeal certainly wants here is a fully
13 developed record. And if --if your Honor feels confined by the
14 rule 60 and -- and doesn't think that it's got the discretion
15 to rule on those -- that pending motion to quash, then our
16 preference would be to continue this hearing today and to go to
17 the Court of Appeals and just get clarification as to whether
18 or not we're entitled to that discovery pending the appeal.

19 MR. ARIAIL: Your honor, I don't even know where to begin
20 in regards to that. First of all, they started the process
21 after judgment, continue to do discovery. The scheduling order
22 has gone in this case. The judgment has been entered in
23 regards to it.

24 They have not handled this by the appropriate avenues in
25 regards to it. They violated rule 11 by sending me a subpoena.

1 They have done other things in regards to trying to perpetuate
2 information from third parties by without telling them, hey,
3 the end -- the matter is ended in regards to this. They go
4 about this to try to throw everything against the wall and to
5 find whatever they can after the judgment has been rendered and
6 after you issued the default judgment with the damages hearing
7 in regards to that.

8 And now they come in here and they're not able to go
9 forward or don't want to go forward because they didn't ask the
10 Court of Appeals to remand other things which they now believe
11 are necessary. Judge, we're here before you on the Rule 60.
12 We came prepared to be able to do that. We believe that is
13 before the court. We're not agreeing to a continuance in
14 regards to it. We want to have it heard so we can move this
15 case along. This is another delay tactic.

16 THE COURT: Well, and I'm assuming when they say nothing,
17 this order prevents the circuit court from hearing an
18 appellant's pending motion to stay execution, that that's
19 procedurally the rules say when you appeal, you can apply for
20 supersedeas, but you have to first apply --

21 MR. ARIAIL: Correct.

22 THE COURT: -- to the circuit court. However, they didn't
23 say that in this order. I think that's what they meant. I'm
24 going to give them their continuance so they can go back to the
25 Court of Appeals and say, give Judge Culbertson an order that

1 outlines what he can hear. And if it's not in that order, I
2 mean, it's on the record now, I can tell them I'll do a full
3 report, that you will want to argue motions beyond the 60B
4 motion.

5 You will want me to order discovery for the 60B motion.
6 You will want me to hear the motion to quash subpoenas. I was
7 going by their order that says I'm here for a Rule 60B motion.
8 Therefore, over your objection, I granted a continuance so you
9 could go back to the Court of Appeals to find out what I can
10 hear.

11 Because my understanding is the only thing I can hear is a
12 motion for supersedeas and a motion to reconsider or motion --
13 a Rule 60B motion that they remanded. There is no, I mean, I
14 know the same rules apply on a motion to reconsider. 59E, you
15 have to go to the Court of Appeals, and they have to release
16 jurisdiction to come back. But this isn't a Rule 59E motion.
17 This is a Rule 60B motion. So, we'll hear that.

18 MR. ARIAIL: And -- and I understand.

19 MS. TILLMAN: And I -- yeah.

20 THE COURT: I mean you can -- you can make your argument
21 that they're the ones that appealed. They transferred
22 jurisdiction.

23 MR. ARIAIL: I don't know why they appealed in the first
24 place after a 59 was filed. But we're -- are where we are
25 based upon --

1 THE COURT: Yeah.

2 MR. ARIAIL: -- their procedural mistakes, as I suppose.

3 MS. TILLMAN: Well, it's not a procedural mistake in the
4 court. We -- we -- Mr. -- Mr. Ariail --

5 THE COURT: The Court of Appeals will decide that.

6 MS. TILLMAN: Yeah and it did. And that's why it
7 remanded. And -- and Mr. Mills made the same argument. I
8 mean, Mr. Ariail made the same argument to the Court of
9 Appeals. And the Court of Appeals did not agree. So and --
10 and I will tell you --

11 THE COURT: Well, I mean, to me it looks like they did.

12 MS. TILLMAN: Well, no, no. They -- they --

13 THE COURT: It looks to me like they agreed and said we're
14 remanding this for a Rule 60B motion.

15 MS. TILLMAN: Correct.

16 THE COURT: And nothing else.

17 MS. TILLMAN: But -- but not -- what I'm saying is he --
18 he says that we should never have filed an appeal. Obviously,
19 we're jurisdictionally required to file an appeal within 30
20 days of the order. The order that triggered that
21 jurisdictional requirement was really the receivership order.
22 We were worried that if we didn't appeal it immediately, Mr. --
23 Mr. Ariail would argue that we eluded from that appeal.

24 We lost jurisdiction. And that's why we did it. We
25 already argued this to the Court of Appeals. That's why we're

1 back here. But one other point is there's no prejudice
2 suffered by Mr. Ariail here in your Honor order in a
3 continuance because there -- the judgment is secured. And
4 there's -- so that --

5 THE COURT: That's why I want -- I don't want to make a
6 decision and the Court of Appeals say, look, this was a 60B
7 motion. He didn't have --

8 MS. TILLMAN: Right.

9 THE COURT: -- jurisdiction to do that. By the same
10 token, if the Court of Appeals, like you say, does want a
11 complete record of all these decisions, even though they have
12 not come before the court before, then that's -- I'll give them
13 what they want. But I don't want to give them something and
14 they say, we didn't want that. So go back to the Court of
15 Appeals and get -- but I can tell you right now, if it comes
16 back to me, I'm only going to hear what the Court of Appeals
17 says I can hear.

18 So you better look at their order. And if their order
19 doesn't say I can hear a motion to quash subpoena, then I'm not
20 going to hear it. If they're, and by this, I need the more
21 current order, because according to this, I'm supposed to hear
22 a rule 60B motion that was filed within 10 days of the date of
23 this order. Now there may be other stuff, but I never got
24 that.

25 MS. TILLMAN: Okay.

1 MR. ARIAIL: I can give you the last letter that was sent
2 if you want it your Honor

3 THE COURT: That's --

4 MR. ARIAIL: -- for the file.

5 THE COURT: -- that's fine.

6 MR. ARIAIL: Okay.

7 THE COURT: I believe you on that. But I'm telling you
8 what, all I can do is review what I get. And I never got a
9 rule 60B motion filed within 10 days after the date of this
10 order. Well, I guess I did that rule -- the -- the May -- no
11 that was the order to vacate. I mean the motion to stay
12 execution.

13 MS. TILLMAN: Well, actually it's also -- it's -- it's --
14 it's -- it's both. It's a motion to stay execution, but also
15 to vacate the receivership. So that's -- that's rule 60. And,
16 you know, I appreciate your --

17 THE COURT: Yeah.

18 MS. TILLMAN: -- believing me when I say there was
19 additional stuff after that order.

20 THE COURT: Well --

21 MS. TILLMAN: And that's in the Court of Appeals record
22 and --

23 THE COURT: Go back to the Court -- Court of Appeals and
24 have them itemize what I can and cannot hear.

25 MS. TILLMAN: Okay.

1 MR. ARIAIL: That's fine. Judge

2 MS. TILLMAN: Yeah.

3 MR. ARIAIL: -- just one thing to end. We got an
4 affidavit last night from Mr. Henderson. I just want to verify
5 on the record that was his affidavit he reviewed and he signed
6 it.

7 MS. TILLMAN: Yes.

8 MR. ARIAIL: Can counsel --

9 MS. TLLMAN: That's -- that's --

10 MR. ARIAIL: Okay. So that is his signature on that?

11 MS. TILLMAN: Yes.

12 MR. ARIAIL: Okay, got it. Thank you.

13 THE COURT: Okay.

14 MR. ARIAIL: That's all we wanted to make sure.

15 THE COURT: All right we'll continue these. Now, I know a
16 rule 59E motion has to come back. A rule 60B, this doesn't, I
17 mean, once you get it from the Court of Appeals, it can be
18 heard. It can go to any judge, can't it? 60B, yeah.

19 MS. TILLMAN: Yes your Honor.

20 MR. ARIAIL: I can but your Honor I would request that
21 this stay with you based upon where we are in regards to you
22 hearing the damages hearing. And there's a lot of stuff coming
23 in here as to what happened in that damages hearing. And I
24 think you would be the best one to be able to at least keep it
25 for that purpose.

1 THE COURT: Well, can't even see my schedule I guess.
2 What I'm concerned is is that I'm in Georgetown less and less.
3 I'm in Conway 90 percent of the time.

4 MR. ARIAIL: I'll tell you what you do, Judge. I'll make
5 it real simple. I'll agree to this is they do what they need
6 to do. Whatever they get from the Court of Appeals, we'll
7 schedule it around your schedule either in Conway or here. But
8 I would feel out of abundance of caution since you have been
9 the one that has heard this to be able to continue to hear it.

10 THE COURT: I'll be honest with you, I'm not eager to read
11 600 pages.

12 MR. ARIAIL: All right.

13 THE COURT: (indiscernible).

14 MR. ARIAIL: Well I can (indiscernible).

15 THE COURT: (indiscernible).

16 MR. ARIAIL: I can give you the bullet point when I argue
17 it, but at least we want to make a part of the record.

18 THE COURT: And I understand that. But if it's --

19 MS. TILLMAN: I defer to you and the fate of the Clerk of
20 the Court as to who hears a rule 60 motion.

21 THE COURT: Yeah. However it'll -- it'll just go like --
22 like I say, it'll go like any other motion.

23 MR. ARIAIL: Okay.

24 THE COURT: It'll go on the roster. It'll be scheduled in
25 its order of priority. Of course, you've already got it fine.

1 MR. ARIAIL: Right.

2 THE COURT: I guess now what we're waiting to do is find
3 out from the Court of Appeals what I'm to hear.

4 MR. ARIAIL: Got it.

5 THE COURT: And when we get that information, then
6 wherever it appears on the roster, it'll appear on the roster.

7 MR. ARIAIL: Got it.

8 THE COURT: All right.

9 MR. ARIAIL: Thank you.

10 MR. FEW: Thank you your Honor.

11 THE COURT: All right. Thank you.

12 MR. MIHALIC: Thank you Judge.

13 MS. TILLMAN: Thank you your Honor.

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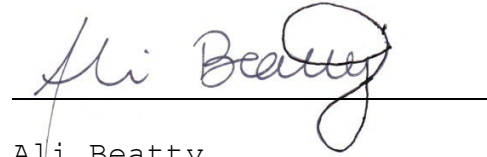
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CERTIFICATE OF TRANSCRIBER

I, Ali Beatty, a certified transcriber, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Common Pleas Court of Georgetown County, South Carolina, on the 10th day of September 2026.

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

October 5, 2026

A handwritten signature in blue ink that reads "Ali Beatty". The signature is written over a horizontal line.

Ali Beatty

Transcriber

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Oct 08 2026

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GEORGETOWN COUNTY
Court of Common Pleas

The Honorable Benjamin H. Culberson, Presiding Circuit Court Judge
The Honorable William H. Seals, Jr., Presiding Circuit Court Judge
The Honorable William P. Keesley, Presiding Circuit Court Judge

Circuit Court Case No. 2022-CP-22-00650
Court of Appeals Case No. 2026-000265

Frank Henderson and Antioch GroupAppellants,

v.

Abundance Home Care and Tyrhonda Priest.....Respondents,

PROOF OF SERVICE

I certify that on October 8, 2026, I served *Respondents' Response to Appellants' Request for Clarification* on all Appellants by sending the same to the below-listed attorneys of record and the email addresses of record with the AIS:

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October 8, 2026

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