

**IN THE UNITED STATES DISTRICT COURT
 FOR THE NORTHERN DISTRICT OF ALABAMA
 SOUTHERN DIVISION**

ROCHE DIAGNOSTICS)	
CORPORATION, et al.,)	
)	
Plaintiffs,)	
)	Civil Action No.: 2:18-cv-01479-KOB-HNJ
vs.)	
)	
PRIORITY HEALTHCARE)	
CORPORATION, et al.,)	
)	
Defendants.)	

MEMORANDUM OPINION

This matter is before the court on Defendant Phillip Minga’s “Motion to Set Aside Default Judgment” (doc. 489) and Defendants Konie Minga; Priority Healthcare Corporation; Medpoint, LLC; and Medpoint Advantage, LLC’s “Motion to Set Aside Default” (doc. 491). The court refers to these five Defendants as the “Defaulted Defendants.” Plaintiffs Roche Diagnostics Corporation and Roche Diabetes Care, Inc., filed a response in opposition to the Defaulted Defendants’ motions. (Doc. 495). The motions are ripe for review. For the reasons discussed below, the court DENIES the Defaulted Defendants’ motions to set aside the default judgment.

I. Background

Roche—an international healthcare conglomerate and diabetic test strip manufacturer—filed the instant suit on September 11, 2018, bringing claims against approximately 40 Defendants for common law and statutory fraud, conspiracy to commit fraud, negligent misrepresentation, unjust enrichment, and violations of the Racketeer Influenced and Corrupt Organizations Act. (Docs. 1, 90, 306). Roche alleges that both Individual and Corporate

Defendants¹ submitted fraudulent rebate adjudications to insurance companies and pharmacy benefit managers (PBMs) for Roche’s test strips, costing Roche more than \$30 million. Roche avers that spouses Konie and Phillip Minga led the enterprise, with Konie Minga owning the Corporate Defendants and Phillip Minga acting as the de facto director of the scheme. Roche specifically contends that the primary Corporate Defendant, PHC, owns or operates all the other Corporate Defendants as subsidiaries for the purpose of generating, submitting, and processing fraudulent insurance claims related to Roche’s test strips.

On January 3, 2020, Roche moved the court to issue case-ending sanctions. (Doc. 362). On May 8, 2020, the court entered case-ending sanctions—a default judgment—against five of the Defendants—Phillip Minga; Konie Minga; Priority Healthcare Corporation; Medpoint, LLC; and Medpoint Advantage, LLC. (Doc. 424). In the memorandum opinion accompanying its order, the court reasoned that issuing case-ending sanctions was appropriate because evidence “clearly and convincingly” showed that the Defaulted Defendants “engaged in egregious bad-faith behavior by falsifying hundreds of key discovery documents and refusing to acknowledge their fraud,” undermining the integrity of the judicial process. (Doc. 423 at 2).

On June 8, 2020, Defaulted Defendant Phillip Minga and Defaulted Defendants Konie Minga; Priority Healthcare Corporation; Medpoint, LLC; and Medpoint Advantage, LLC filed motions to set aside the default. (Docs. 442, 443). Shortly thereafter, the Defaulted Defendants filed for bankruptcy, and the court stayed the case and struck the motions to set aside the default.

¹ The court has identified which Defendants are the “Individual Defendants” and which Defendants are the “Corporate Defendants” in a previous memorandum opinion. (Doc. 212 at 2–3 nn. 1–2).

(Doc. 446). On October 21, 2020, shortly after Defendants' bankruptcy cases were dismissed, the court lifted the stay. (Doc. 480). On October 29, 2020, Defendant Phillip Minga refiled his Motion to Set Aside Default Judgment. (Doc. 489). Defendants Konie Minga; Priority Healthcare Corporation; Medpoint, LLC; and Medpoint Advantage, LLC also refiled a Motion to Set Aside Default, adopting and incorporating Mr. Minga's arguments. (Doc. 491).²

II. Legal Standard

Under Federal Rule of Civil Procedure 55(c), a court may set aside an entry of default for good cause and set aside a final default judgment in accordance with Rule 60(b). The Advisory Committee notes to the 2015 amendment of Rule 55 state that

Rule 55(c) is amended to make plain the interplay between Rules 54(b), 55(c), and 60(b). A default judgment that does not dispose of all of the claims among all parties is not a final judgment unless the court directs entry of final judgment under Rule 54(b). *Until final judgment is entered, Rule 54(b) allows revision of the default judgment at any time.* The demanding standards set by Rule 60(b) apply only in seeking relief from a final judgment.

Fed. R. Civ. P. 55(c) advisory committee's note (emphasis added).

In his motion to set aside default judgment, Defendant Phillip Minga argues that the court should have entered a default, not a default judgment, because "the issue of damages, if any, has not been determined." (Doc. 489 at 2). As the court explains further below, the court did not err in entering a default judgment instead of a mere default. Mr. Minga makes this argument in part

² Ms. Minga; Priority Healthcare Corporation; Medpoint, LLC; and Medpoint Advantage join in Mr. Minga's arguments in their Motion to Set Aside Default. (Doc. 491). Throughout this opinion, the court refers to Mr. Minga's arguments for ease of reading. Mr. Minga's arguments are, however, joined by the other Defaulted Defendants, and the court's analysis applies to all the Defaulted Defendants.

because he would like the court to apply the “good cause” standard, rather than the Rule 60(b) standard in reviewing his motion to set aside the default. For a normal default judgment, Rule 54(b) is the appropriate standard to apply because a default judgment that does not resolve all claims among all parties is not a final judgment. However, “if a party willfully defaults by displaying either an intentional or reckless disregard for the judicial proceedings, the court need make no other findings in denying relief” when considering a motion to set aside an entry of default. *Compania Interamericana Export-Import, S.A. v. Compania Dominicana de Aviacion*, 88 F.3d 948, 951–52 (11th Cir. 1996).

Plaintiffs argue that the Defaulted Defendants’ motions are more properly characterized as motions for reconsideration, not motions to aside the default judgment. Even if the court considers the motions as motions for reconsideration, Rule 54(b) is the standard, as Rule 54(b) is the more proper standard of review for interlocutory orders, rather than Rule 59(e). Under Rule 54(b), a court may revise “any order or other decision . . . that adjudicates fewer than all claims or the rights and liabilities of fewer than all the parties” at “any time before the entry of a judgment adjudicating all the claims and all the parties’ rights and liabilities.” Whether to grant a motion to reconsider under Rule 54(b) is “committed to the sound discretion of the district judge.” *Region 8 Forest Serv. Timber Purchasers Council v. Alcock*, 993 F.2d 800, 806 (11th Cir. 1993).

Rule 54(b) “does not delineate the parameters of a district court’s discretion to reconsider interlocutory orders, [but the Eleventh Circuit] ha[s] at least indicated that Rule 54(b) takes after Rule 60(b).” *Hermann v. Hartford Life & Accident Ins. Co.*, 508 Fed. Appx. 923, 927 n. 1 (11th

Cir. 2013) (citing *Fernandez v. Bankers Nat'l Life Ins. Co.*, 906 F.2d 559, 569 (11th Cir. 1990)). Under Rule 60(b), a court may provide relief for reasons such as “mistake, inadvertence, surprise, or inexcusable neglect” and “any other reason that justifies relief.” But the court finds that no reason justifies relief from its previous order issuing a default judgment against the Defaulted Defendants.

III. Discussion

On June 10, 2020, this court stayed this case after the Defaulted Defendants filed a suggestion of bankruptcy. (Doc. 446). In staying the case, the court also struck the first motions to set aside default Mr. Minga and the Defaulted Defendants filed. (*Id.*). In its order, the court stated, “Even if the court considered the motions for reconsideration on their merits, the court would deny both of them for the reasons explained in the memorandum opinion accompanying the order granting default judgment.” (*Id.*). The court now DENIES the Defaulted Defendants’ motions to set aside default judgment for the reasons explained below, as well as the reasons explained in the memorandum opinion accompanying the order entering default judgment (doc. 423).

A. Entry of Default vs. Default Judgment

Mr. Minga first argues that the court erred in entering a default judgment, rather than an entry of default, because the issue of damages has not yet been determined. (Doc. 489 at 2). Typically, two steps lead to a default judgment: first, an entry of default and second, an entry of default judgment. Fed. R. Civ. P. 55. Here, the court entered default judgment as a sanction; an entry of default was never entered because default is typically used when a party fails to answer or otherwise defend.

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.