

**UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF
CALIFORNIA**

Firsov v. Aerovias del Continente Americano S.A. Avianca

No. 25-cv-05481-VKD (N.D. Cal. Oct. 28, 2025) · No. 25-cv-05481-VKD · Decided October 28, 2025

OPINION

1 2 3 4 UNITED STATES DISTRICT COURT 5 NORTHERN DISTRICT OF CALIFORNIA 6
SAN JOSE DIVISION 7 8 SERGEY FIRSOV, et al., Case No. 25-cv-05481-VKD Plaintiffs, 9
ORDER DENYING PLAINTIFFS’ 10 v. MOTION TO RECOVER COST OF FORMAL
SERVICE OF SUMMONS 11 AEROVIAS DEL CONTINENTE AMERICANO S.A. AVIANCA,
Re: Dkt. No. 12 12 Defendant. 13 14 On October 2, 2025, plaintiffs Sergey Firsov and Kateryna
Pomogaibo, who are 15 representing themselves, filed a motion to recover costs for service of
process.

Dkt. No. 12. 16 Defendant Aerovias Del Continente Americano S.A. Avianca (“Avianca”) opposes
the motion. 17 Dkt. No. 14. This motion is suitable for resolution without oral argument. Civil
L.R. 7-1(b). The 18 Court denies plaintiffs’ motion for the reasons set forth below. 19 Rule 4 of
the Federal Rules of Civil Procedure provides that a corporation “subject to 20 service under Rule
4(e), (f), or (h) has a duty to avoid unnecessary expenses of serving the 21 summons.” Fed.

R. Civ. P. 4(d)(1). The Rule permits a plaintiff to notify a defendant about a 22 lawsuit brought by
the plaintiff and ask the defendant to waive service of summons. Id. If the 23 defendant is a
corporation, notice must be given “to an officer, a managing or general agent, or 24 any other
agent authorized by appointment or by law to receive service of process.” Fed.

R. Civ. 25 P. 4(d)(1)(A)(ii). “Once a plaintiff has sent a valid request for a waiver of service of
process, the 26 burden shifts to the defendant to avoid imposing unnecessary costs on the
plaintiff.” Rollin v. 27 Cook, 466 F. App’x 665, 667 (9th Cir. 2012). If a defendant “fails, without
good cause,” to waive 1 Civ. P. 4(d)(2). 2 In their motion, plaintiffs contend they provided Avianca
with notice of the action, the 3 summons, the complaint, and waiver of summons on July 7, 2025.

Dkt. No. 12 at 1. They say 4 that “Defendant refused to communicate and return signed Waiver of
Summons in 60 days” and 5 that defendant “was personally served Summons and Complaint in
SFO airport” on September 29, 6 2025. Id. Plaintiffs claim to have paid \$150 for “formal service”
of these documents. Id. 7 Plaintiffs’ motion is not supported by any evidence.

8 Avianca responds that plaintiffs have not shown that they provided proper notice of the 9 action
under Rule 4(d)(1), or that they properly served Avianca thereafter, and are not entitled to 10
recover any expenses for service. Dkt. No. 14 at 3-4. Avianca argues that, at best, the record 11

reflects that plaintiffs attempted to provide notice to and/or service upon a staff member at 12 Avianca's airport ticket counter at San Francisco International Airport ("SFO").

Id. at 3. 13 The docket reflects that plaintiffs have filed three proofs of service in this case. Dkt. Nos. 14 10, 21, 28. Two of these proofs of service were filed only after plaintiffs filed their motion to 15 recover service costs and they appear to be identical. Dkt. Nos. 21, 28. These filings fail to 16 demonstrate that plaintiffs gave notice to an officer, general manager, or authorized agent for 17 service of process.

Plaintiffs' first proof of service, filed on September 12, 2025, states that Mr. 18 Firsov served a summons on Qatar Airways Group, which is not a party to this action. See Dkt. 19 No. 10 at 2. The accompanying "Affidavit of Due Diligence" states that Oleksandra Pomohaibo 20 unsuccessfully attempted to serve an employee at the Avianca check-in counter at SFO.

Id. at 1. 21 The second proof of service, filed on October 21, 2025, states that Myron Pomohaibo served a 22 summons on "supervisor Daffny in Avianca uniform" at SFO. Dkt. No. 21 at 2; Dkt. No. 28 at 2. 23 Plaintiffs have not shown that they complied with the requirements of Rule 4(d).

First, 24 they have not demonstrated that they complied with the requirements of Rule 4(d)(1) by providing 25 notice to "an officer, a managing or general agent, or any other agent authorized by appointment 26 or by law to receive service of process." See Fed. R. Civ. P. 4(d)(1)(A)(ii); see, e.g., *Fuentes v. 27 Nat'l Tr. Co. Deutsche Bank*, No. 22-cv-04953-BLF, 2023 WL 2278701, at *3 (N.D.

Cal. Feb. 27, 1 designated officer or managing agent of the corporation" and plaintiff "provided no proof that the 2 || receptionist was authorized by appointment or law to receive service"); *Jimena v. UBS AG Bank, 3 Inc.*, No. 07-cv-00367-OWW-TAG, 2007 WL 1687045, at *5 (E.D. Cal. June 8, 2007) (service on 4 bank branch and office manager was insufficient).

Instead, the record reflects that whatever notice 5 || plaintiffs provided was provided only to someone working in "SFO airport." There is no evidence 6 || that any such notice informed Avianca "of the consequences of waiving and not waiving service." 7 See Fed. R. Civ. P. 4(d)(1) (D).

Second, even if they had complied with Rule 4(d)(1), plaintiffs 8 || have not shown that they subsequently accomplished formal service on Avianca for which they are 9 entitled to recover expenses. See Fed. R. Civ. P. 4(d)(2)(A); see also Fed. R. Civ. P. 4(c), (h) 10 (requirements for service on a corporation). 11 "Because [plaintiffs] have not established that [they] complied with Rule 4(d)(1), [they] 12 cannot be compensated for the formal cost of service." *Firsov v. Scandinavian Airlines of N. Am., 13 Inc.*, No. 25-cv-03691-EMC, 2025 WL 2733645, at *1 (N.D.

Cal. Sept. 25, 2025); see also *Firsov 14 v. United Airlines, Inc., et al.*, No. 25-cv-03784-BLF, Dkt. No. 48. Accordingly, the Court denies 3 15 plaintiffs' motion to recover costs for service of process. a 16 IT IS SO ORDERED. 17 || Dated: October 28, 2025 18, ee □ 19 Varapvin BE, LaMarche: Virginia K. DeMarchi 20 United States Magistrate Judge 21 22 23 24 25 26 27 28

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