UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLORADO

Janice Alzado-Lotz v. Thomas Bock

Alzado-Lotz v. Bock, No. 20-cv-02928-DDD-CYC (D. Colo. Jan. 16, 2026) · No. 20-cv-02928-DDD-CYC · Decided January 16, 2026

SUMMARY

The United States Magistrate Judge recommends granting in part and denying in part the defendant's motion to dismiss in an investment-advisory dispute. The recommendation rejects challenges to service of process and the statute of repose, but recommends dismissing certain fraud and Securities Exchange Act allegations without prejudice for failure to satisfy heightened pleading standards. The Court also denies the defendant's motion for judicial notice and orders a scheduling conference.

CASE DETAILS

COURT	United States District Court for the District of Colorado
WRITING FOR THE COURT	Cyrus Y. Chung
JURISDICTION	United States District Court for the District of Colorado
DECIDED	January 16, 2026
DOCKET	20-cv-02928-DDD-CYC
DISPOSITION	other
PROCEDURAL POSTURE	Defendant moved to dismiss claims against him for insufficient service of process, untimeliness under a statute of repose, and failure to satisfy heightened pleading requirements for fraud and Securities Exchange Act claims. The magistrate judge recommended partial dismissal without prejudice and denial of the request for judicial notice.
STANDARD OF REVIEW	On a Rule 12(b)(5) motion, the plaintiff initially bears the burden of making a prima facie showing of valid service; a signed return of service constitutes prima facie evidence that can be overcome only by strong and convincing evidence. On a motion to dismiss, the court must accept well-pleaded allegations as true and determine whether the complaint states a claim; failure to respond does not alone justify dismissal. Fraud allegations must satisfy Federal Rule of Civil Procedure 9(b), and Securities Exchange Act claims alleging misleading statements or omissions must satisfy 15 U.S.C. § 78u-4(b).
PRECEDENTIAL VALUE	Unknown; magistrate judge's order and recommendation

TOPICS

service of process · motions to dismiss · pleadings · civil procedure · commercial litigation

PRACTICE AREAS

civil procedure · commercial litigation · securities litigation · contracts

QUESTIONS PRESENTED

1. Whether the filed proof of service established prima facie valid service and whether Bock presented strong and convincing evidence rebutting service on the condominium building's onsite manager.
2. Whether plaintiff's claims were barred at the pleading stage by a statute of repose or limitations period based on Bock's alleged 2015 resignation from securities-industry registration.
3. Whether the fraud and Securities Exchange Act portions of the complaint satisfied Federal Rule of Civil Procedure 9(b) and 15 U.S.C. § 78u-4(b).
4. Whether the court should take judicial notice of Bock's termination notice.

HOLDINGS

1. A filed return of service showing delivery of the summons and complaint to an authorized onsite manager at the defendant's dwelling establishes prima facie valid service under Federal Rule of Civil Procedure 4(e)(2)(B). The defendant did not present strong and convincing evidence sufficient to rebut that showing.
2. Dismissal on statute-of-repose or limitations grounds was unwarranted because the argument had previously been rejected and the complaint's allegations, construed favorably to plaintiff, did not establish at the pleading stage that Bock's 2015 resignation ended the relevant relationship or rendered the 2020 action untimely.
3. A court may not grant a motion to dismiss merely because the plaintiff failed to respond; it must independently examine the complaint to determine whether it states a claim.
4. Claim 5 and Claim 7 to the extent based on the Securities Exchange Act should be dismissed without prejudice because the complaint did not identify with sufficient particularity the statements or omissions attributable to Bock or allege facts showing his involvement in creating the brokerage agreement.

KEY QUOTATIONS

> *"A signed return of service constitutes prima facie evidence of valid service, which can 'be overcome only by strong and convincing evidence.'"*

> *"Under Tenth Circuit precedent, however, 'a district court may not grant a motion to dismiss for failure to state a claim merely because a party failed to file a response.'"*

> *"The plaintiff's shotgun approach in her allegations of fraud against the individual MSI defendants lacks the requisite particularity to survive a motion to dismiss."*

FACTUAL BACKGROUND

Plaintiff entrusted a retirement account worth approximately $232,330.57 to an investment advisory firm affiliated with Bock and others. Although she requested moderate-risk, non-speculative investments, her account was invested in undiversified, high-risk foreign mining stock, and its value later declined to approximately $22,386.82. Plaintiff alleged that the investment strategy violated contractual, fiduciary, securities, and FINRA-related obligations.

PROCEDURAL HISTORY

Plaintiff commenced the action on September 28, 2020, asserting contract, tort, elder-abuse, securities, and related claims against multiple defendants. After the other defendants moved to dismiss and later settled, the case proceeded against Bock. The court accepted a late-filed proof of service, entered and then set aside a clerk's entry of default, and referred Bock's motions to the magistrate judge. This order and recommendation addressed Bock's motion to dismiss and request for judicial notice.

DISPOSITION

other

REMAND INSTRUCTIONS

The magistrate judge recommended that the district judge grant the motion to dismiss in part, dismissing Claim 5 and Claim 7 insofar as it is based on the Securities Exchange Act without prejudice, and deny the motion in all other respects. The court denied the request for judicial notice and ordered a scheduling conference for March 19, 2026.

CASES CITED

- Alzado-Lotz v. Mut. Secs., Inc., No. 20-cv-02928-DDD-MEH, 2023 WL 11903713 (D. Colo. Aug. 4, 2023)
- Alzado-Lotz v. Mut. Secs., Inc., No. 20-cv-02928-DDD-MEH, 2023 WL 11903720 (D. Colo. Aug. 11, 2023)
- Alzado-Lotz v. Mut. Secs., Inc., No. 20-cv-02928-DDD-MEH, 2024 WL 3836003 (D. Colo. May 15, 2024)
- Alzado-Lotz v. Mut. Secs., Inc., No. 20-cv-02928-DDD-CYC, 2025 WL 2725049 (D. Colo. Aug. 11, 2025)
- Gallan v. Bloom Bus. Jets, LLC, 480 F. Supp. 3d 1173, 1178 (D. Colo. 2020)
- Sarnella v. Kuhns, No. 17-cv-02126-WYD-STV, 2018 WL 1444210, at *1 (D. Colo. Mar. 23, 2018)
- Allen v. United Props. & Const., No. 07-cv-00214-LTB-CBS, 2008 WL 4080035, at *9 (D. Colo. Sept. 3, 2008)
- O'Brien v. R.J. O'Brien & Assocs., 998 F.2d 1394, 1398 (7th Cir. 1993)
- Fed. Deposit Ins. Corp. v. Oaklawn Apartments, 959 F.2d 170, 174 (10th Cir. 1992)
- GGNSC Equity Holdings, LLC v. Breslin, No. 1:14-MC-00450, 2014 WL 5463856, at *2 (M.D. Pa. Oct. 27, 2014)
- TRW, Inc. v. Derbyshire, 157 F.R.D. 59, 60 (D. Colo. 1994)
- Karlsson v. Rabinowitz, 318 F.2d 666, 668 (4th Cir. 1963)

- craigslist, Inc. v. Hubert, 278 F.R.D. 510, 514 (N.D. Cal. 2011)
- Smith v. Kincaid, 249 F.2d 243, 245 (6th Cir. 1957)
- People's United Equip. Fin. Corp. v. Hartmann, 447 F. App'x 522, 524 (5th Cir. 2011)
- Aetna Business Credit, Inc. v. Universal Décor & Interior Design, Inc., 635 F.2d 434, 435 (5th Cir. 1981)
- Pell v. Azar Nut Co., 711 F.2d 949, 949 (10th Cir. 1983)
- Nikwei v. Ross Sch. of Aviation, Inc., 822 F.2d 939, 941 (10th Cir. 1987)
- Garrett v. Selby Connor Maddux & Janer, 425 F.3d 836, 840 (10th Cir. 2005)
- Hall v. Bellmon, 935 F.2d 1106, 1110 (10th Cir. 1991)
- Whitney v. State of N.M., 113 F.3d 1170, 1173–74 (10th Cir. 1997)
- Fournerat v. Wis. L. Rev., 420 F. App'x 816, 819 (10th Cir. 2011)
- Issa v. Comp USA, 354 F.3d 1174, 1177–78 (10th Cir. 2003)
- Anderson v. DelCore, 79 F.4th 1153 (10th Cir. 2023)
- Hinzo v. Williams, 563 F. App'x 639 (10th Cir. 2014)
- United States v. Raddatz, 447 U.S. 667, 676–83 (1980)
- Duffield v. Jackson, 545 F.3d 1234, 1237 (10th Cir. 2008)
- Moore v. United States, 950 F.2d 656, 659 (10th Cir. 1991)