UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

Difusion 11700 v. Comercializadora VNA, S.A. DE C.V.

Difusion 11700 · No. 25-cv-06215-AMO · Decided January 14, 2026

SUMMARY

The United States District Court for the Northern District of California granted Comercializadora VNA, S.A. de C.V.'s motion to dismiss Difusion 11700's declaratory judgment action without prejudice. The court held that Difusion failed to establish proper service of process under Federal Rule of Civil Procedure 4(h)(1)(B), because the individual served was not shown to be an officer, managing or general agent, or authorized agent of Comercializadora. The court terminated a discovery letter brief as moot, denied a request for judicial notice as moot, and directed the Clerk to close the case.

CASE DETAILS

COURT	United States District Court for the Northern District of California
WRITING FOR THE COURT	Araceli Martinez-Olguin
JURISDICTION	United States District Court for the Northern District of California
DECIDED	January 14, 2026
DOCKET	25-cv-06215-AMO
DISPOSITION	dismissed
PROCEDURAL POSTURE	Defendant moved to dismiss the declaratory-judgment action under Federal Rule of Civil Procedure 12(b), including for insufficient service of process under Rule 12(b)(5). The court resolved the motion solely on the service-of-process issue and dismissed the action without prejudice.
STANDARD OF REVIEW	On a Rule 12(b)(5) motion, the plaintiff bears the burden of establishing that service was valid under Federal Rule of Civil Procedure 4. A district court has broad discretion to dismiss an action for failure to effect service.
PRECEDENTIAL VALUE	unknown

TOPICS

service of process · motions to dismiss · civil procedure · trademark law · commercial litigation

PRACTICE AREAS

Civil procedure | Trademark law | Commercial litigation

QUESTIONS PRESENTED

1. Whether Difusion properly served Comercializadora under Federal Rule of Civil Procedure 4(h)(1)(B).
2. Whether the action should be dismissed without prejudice for insufficient service of process under Federal Rule of Civil Procedure 12(b)(5).

HOLDINGS

1. Service was invalid because Difusion failed to establish that Juan Losa was an officer, managing or general agent, or other agent authorized by appointment or law to receive service for Comercializadora.
2. Dismissal under Federal Rule of Civil Procedure 12(b)(5) was proper, and the action was dismissed without prejudice.

KEY QUOTATIONS

> *"“Once service is challenged, plaintiffs bear the burden of establishing that service was valid under [Federal] Rule [of Civil Procedure] 4.”"* (at 1)

> *“Rule 4(h)(1)(B) permits service on a managing or general agent, and the manager at the Miami venue fits that description.”* (at 2)

FACTUAL BACKGROUND

Difusion 11700, a Mexican corporation operating Despecho-named bars and restaurants in Mexico, sued Comercializadora VNA, another Mexican corporation involved in developing and licensing hospitality businesses, over priority rights to the DESPECHO mark. Difusion attempted service by leaving case documents with Juan Losa at a Sala de Despecho-branded venue in Miami operated by Blitz Development International LLC, a Florida company. Comercializadora submitted evidence that Losa was not its officer, director, managing or general agent, authorized representative, employee, or contractor, and that it had no authorized representatives working at the Miami address. Difusion offered no countervailing evidence establishing Losa's authority to accept service.

PROCEDURAL HISTORY

Difusion 11700 filed a complaint on July 23, 2025, seeking a declaration that it had priority rights to the DESPECHO mark in the United States. Comercializadora VNA moved to dismiss on September 26, 2025, asserting, among other grounds, insufficient service, lack of personal jurisdiction, improper venue, primary jurisdiction, and failure to state a claim. The court vacated the scheduled hearing, granted the motion based on insufficient service, dismissed the action without prejudice, terminated a discovery letter brief as moot, denied a request for judicial notice as moot, and directed the Clerk to close the case.

DISPOSITION

dismissed

CASES CITED

- Murphy Bros. v. Michetti Pipe Stringing, Inc., 526 U.S. 344, 350 (1999)
- Saye v. Rubin, 225 F.3d 663 (9th Cir. 2000)
- S.E.C. v. Ross, 504 F.3d 1130, 1138-39 (9th Cir. 2007)
- Brockmeyer v. May, 383 F.3d 798, 801 (9th Cir. 2004)
- Jones v. Automobile Club of Southern California, 26 Fed. App'x. 740, 742 (9th Cir. 2002)

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