

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)

#### OPINION

1 2 3 4 UNITED STATES DISTRICT COURT 5 NORTHERN DISTRICT OF CALIFORNIA 6 7  
DIFUSION 11700, Case No. 25-cv-06215-AMO 8 Plaintiff, ORDER GRANTING MOTION TO  
9 v. DISMISS WITHOUT PREJUDICE 10 COMERCIALIZADORA VNA, S.A. DE Re: Dkt. No.  
17 C.V., 11 Defendant. 12 13 Before the Court is Defendant Comercializadora VNA, S.A. DE  
C.V.'s motion to dismiss. 14 The matter is fully briefed and suitable for decision without oral  
argument.

Accordingly, the 15 hearing set for January 22, 2026, is VACATED. See Civil L.R. 7-6; Fed. R.  
Civ. Pro. 78(b). 16 Having read the parties' papers and carefully considered their arguments and  
the relevant legal 17 authority, and good cause appearing, the Court GRANTS the motion, for the  
following reasons. 18 BACKGROUND 19 Plaintiff Difusion 11700 ("Difusion") filed suit against  
Comercializadora VNA, S.A.

DE 20 C.V. ("Comercializadora") on July 23, 2025. See Complaint, Dkt. No. 1 ("Compl."). The 21  
complaint brings one cause of action for declaratory judgment and asks the Court to declare that  
22 Difusion has priority rights to the "DESPECHO" mark in the United States. Id. ¶¶ 63, 74(a). 23  
Difusion is a Mexican corporation, which owns multiple bars and restaurants throughout Mexico  
24 named Despecho.

Id. ¶ 4, 15. Comercializadora is a Mexican corporation, which develops and 25 licenses hospitality  
businesses, including "Sala de Despecho," a nightlife venue. Id. ¶ 36; 26 Opposition (Dkt. No. 17)  
at 9. Comercializadora does not own or operate establishments, 27 facilities, or entities in the  
United States. Dkt. No 17 at 9. Comercializadora's connection to the 1 Development International  
LLC ("Blitz"), a Florida company that operates a Sala de Despecho- 2 branded experience in  
Miami.

Id. 3 On September 26, 2025, Comercializadora filed its motion to dismiss, arguing that 4 (1)  
Difusion failed to properly serve Comercializadora, (2) the Court lacks personal jurisdiction 5 over  
Comercializadora, (3) venue is improper, (4) the issues presented fall within the primary 6

jurisdiction of the Trademark Trial and Appeal Board, and (5) Difusion failed to state a claim 7 under Federal Rule of Civil Procedure 12(b)(6).

The Court only examines the improper service 8 argument below, as it is dispositive. 9 LEGAL STANDARD 10 Dismissal of a case is proper when there is insufficient service of process. See Fed. R. Civ. 11 P. 12(b)(5); *Murphy Bros. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344, 350 (1999) (“In the 12 absence of service of process (or waiver of service by the defendant), a court ordinarily may not 13 exercise power over a party the complaint names as defendant.”); *Saye v. Rubin*, 225 F.3d 663 (9th 14 Cir.

2000) (affirming dismissal for failure to properly serve defendants pursuant to Fed. R. Civ. P. 15 12(b)(5)). “[I]n the absence of proper service of process, the district court has no power to render 16 any judgment against the defendant’s person or property unless the defendant has consented to 17 jurisdiction or waived the lack of process.” *S.E.C. v. Ross*, 504 F.3d 1130, 1138-39 (9th Cir.

18 2007). “Once service is challenged, plaintiffs bear the burden of establishing that service was 19 valid under [Federal] Rule [of Civil Procedure] 4.” *Brockmeyer v. May*, 383 F.3d 798, 801 (9th 20 Cir. 2004). A district court has broad discretion to dismiss an action for failure to effect service. 21 *Jones v. Automobile Club of Southern California*, 26 Fed.

App’x. 740, 742 (9th Cir. 2002). 22 DISCUSSION 23 Difusion avers that it properly served Comercializadora pursuant to Federal Rule of Civil 24 Procedure 4(h)(1)(B), which provides that a corporation may be served “by delivering a copy of 25 the summons and of the complaint to an officer, a managing or general agent, or any other agent 26 authorized by appointment or by law to receive service of process.” Dkt.

No. 20 at 2. Difusion 27 filed a proof of service certifying that documents related to this case were left with Juan Losa. 1 SALA DE DESPECHO-branded venue operated by licensee Blitz Development International LLC 2 || in Miami. Rule 4(h)(1)(B) permits service on a managing or general agent, and the manager at the 3 || Miami venue fits that description.” Dkt.

No. 20 at 2. 4 But Juan Losa “was not an officer, director, managing or general agent, or otherwise 5 authorized to accept service on behalf of Comercializadora.” Dkt. No. 17 at 12; see Agent 6 || Declaration (Dkt. No. 17-1) §§[ 15-16.

In fact, Comercializadora’s agent declared that the 7 company “has no record of employing, contracting with, or otherwise retaining any individual 8 named ‘Juan Losa’” and “has no employees, officers, directors, or authorized representatives 9 || working at” the Miami address where service was attempted. Dkt. No. 17-1 J] 15-16. □□□ In 10 || response, Difusion fails to provide any countervailing evidence to support the proposition that 11 Losa was authorized to receive service.

See generally Dkt. No. 20. Difusion has therefore failed 12 || to carry its burden of establishing that it properly served Comercializadora. 5 13 CONCLUSION 14 For the foregoing reasons, the Court GRANTS Comercializadora's motion and dismisses 3 15 || this action without prejudice.

In light of this ruling, the Court TERMINATES the parties first 16 discovery letter brief, Dkt. No. 30, as moot. Further, the Court DENIES Comercializadora's 3 17 request for judicial notice, Dkt. No. 23, as moot because the Court did not consider its contents in reaching its ruling. 19 The Court directs the Clerk of Court to close this case. 20 21 IT IS SO ORDERED.

22 Dated: January 14, 2026 23 Med rf / □ 24 coh 95 ARACELI MARTINEZ-OLGUIN United States District Judge 26 27 28