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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Jose Roman, Jr. and Stacy Roman,

10 Plaintiffs,

11 v.

12 Travelers Home and Marine Insurance
13 Company, Alan D Schnitzer, and Brian W
MacLean,

14 Defendants.
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No. CV-17-08151-PCT-JAT

ORDER

16 **I. Motion for Default Judgment**

17 Pending before the Court is Plaintiff Jose Roman's motion for default judgment
18 against Defendants Alan D. Schnitzer and Brian W. MacLean. (Doc. 25). First, the
19 motion for default judgment is premature under Federal Rule of Civil Procedure 55(b)
20 because default has not been entered under Rule 55(a).

21 Second, while Plaintiff Jose Roman has filed an affidavit claiming he served the
22 individual Defendants by certified mail, Plaintiff has not filed a proof of service for either
23 Defendant. As noted in the motion for default, Defendant Travelers has previously stated
24 that the individual Defendants have not been served. Thus, if Plaintiff chooses to seek
25 enter of default under Rule 55(a), he must provide the return certified mail receipts
26 showing proof of service.

27 **II. Rule 16 Scheduling Conference**

28 Additionally, the Court has set a Rule 16 scheduling conference for September 27,

1 2017. Because there is no proof of service, nor an appearance, for the two individual
2 Defendants, the Court finds good cause to continue the Rule 16 conference. *See* Fed. R.
3 Civ. Pro. 16(b)(2). Thus, the conference will be continued to November 8, 2017. If
4 Plaintiff has not filed proof of service for the individual Defendants prior to this new
5 Rule 16 conference, any non-served Defendant will be dismissed under Federal Rule of
6 Civil Procedure 4(m). Further, the parties are required to file a new proposed case
7 management plan (by October 27, 2017) that includes any newly served defendants,
8 consistent with this Court's August 10, 2017 Order.


9 **III. Conclusion**

10 Based on the foregoing,

11 **IT IS ORDERED** that the motion for default judgment (Doc. 25) is denied.

12 **IT IS FURTHER ORDERED** continuing the Rule 16 scheduling conference
13 from September 27, 2017 to November 8, 2017 at 1:30 p.m. Plaintiff Jose Roman is still
14 permitted to appear telephonically. All other counsel or pro se parties must appear in
15 person.

16 Dated this 18th day of September, 2017.

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21 James A. Teilborg
22 Senior United States District Judge
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