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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., et al.,
10 Plaintiffs,

No. CV-17-08151-PCT-JAT

ORDER

11 v.

12 Travelers Home and Marine Insurance
13 Company, et al.,
14 Defendants.

15 Pending before the Court is Defendants Alan D. Schnitzer and Brian W.
16 MacLean's motion to dismiss for failure to serve, and in the alternative motion to dismiss
17 for lack of personal jurisdiction. (Doc. 28).¹ After this motion was filed, Plaintiffs filed a
18 proof of service for each of these Defendants.² (Docs. 29 & 30). These proofs of serve
19 show service on August 9, 2017. Defendants' motion to dismiss does not reference these
20 proofs of service.

21 Because Defendants have answered, the Court will not default them. Because
22 Plaintiffs have filed a proof of service for each Defendant, the Court will not dismiss for
23 lack of service. Because the motion to dismiss for lack of personal jurisdiction is part of
24 the motion to dismiss for lack of service, Defendants will have to re-file it as a its own

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27 ¹ Without waiving these defenses, these two Defendants have also answered.
(Doc. 33).

28 ² Service appears to be timely. *See* 28 U.S.C. § 1448; 4B Charles Alan Wright &
Arthur R. Miller, *Federal Practice and Procedure* § 1137 (4th ed. 2015).

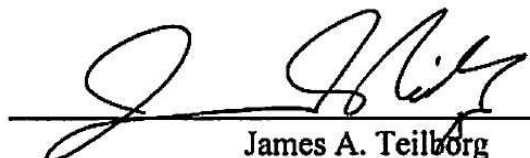
1 motion if they continue to assert the defense of lack of personal jurisdiction.³

2 Based on the foregoing,

3 **IT IS ORDERED** that the motion for default (Doc. 32) is denied;

4 **IT IS FURTHER ORDERED** that the motion to dismiss for lack of service (Doc.
5 28) is denied; the motion to dismiss for lack of personal jurisdiction (Doc. 28) is denied
6 without prejudice to refile within 7 days.

7 Dated this 4th day of October, 2017.

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13 James A. Teilborg
14 Senior United States District Judge
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28 ³ If Defendants re-file, Defendants should not conflate arguments that Plaintiffs may fail to state a claim or may fail on summary judgment (for example, that Defendants are shielded by Travelers' corporate form) with their personal jurisdiction arguments.