



Signed and Filed: June 05, 2008

A handwritten signature in dark ink, appearing to read "T. E. Carlson", is written over a horizontal line.

THOMAS E. CARLSON  
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

In re	)	Case No. 07-31238 TEC
	)	
ROBERT ISAAC ICHO,	)	Chapter 11
	)	
	)	
Debtor.	)	
	)	
ROBERT ISAAC ICHO,	)	
	)	Adv. Proc. No. 08-3023 TC
Plaintiff,	)	
	)	
vs.	)	
	)	
ROYAL SPRING WATER and	)	
ALEX HAZAN,	)	
	)	
Defendants.	)	

**MEMORANDUM RE PLAINTIFF'S MOTION FOR DEFAULT JUDGMENT**

On May 22, 2008, the court held a status conference in the above-captioned proceeding. Heather A. Cutler appeared for Plaintiff. There were no other appearances. At the status conference, the court set an evidentiary hearing for June 17, 2008 on Plaintiff's motion for entry of default judgment in the sum of \$1,250,000. For the reasons stated herein, the court determines that an evidentiary hearing on the motion for default judgment is premature because the complaint fails to state a claim upon which

1 relief may be granted.

2 FACTS

3 The complaint asserts two claims, one for fraud (false  
4 representation), and one for breach of contract. The complaint  
5 alleges as follows:

6 FIRST CLAIM FOR RELIEF  
FRAUD

7 6. Plaintiff and defendants did business over a  
8 period of several months, whereby defendants agreed to  
provide bottled water to plaintiff.

9 7. The water was not delivered in accordance with  
the terms of the contract and in some instances, not at  
10 all. Defendants represented to plaintiff that they would  
return his money to him, and also give him 750,000 shares  
11 of defendant Royal Water, which shares then had a value  
of approximately \$1.65 per share, or a total of in excess  
of \$1.25 million.

12 8. The representations were in fact false. None of  
the representations respecting the terms and conditions  
13 of the agreement were true. Defendants knew that their  
statements were false.

14 SECOND CLAIM FOR RELIEF  
BREACH OF CONTRACT

15 9. Defendants represented to plaintiff that they  
16 would give him \$1.250 million evidenced by 750,000 shares  
of stock on account of his claims, but have not done so.

17  
18 LAW

19 The complaint does not state a claim upon which relief may be  
20 granted. The complaint does not allege essential elements of a  
21 claim for breach of contract such as whether the contract at issue  
22 was written, oral, or implied (and if the contract was oral, the  
23 consideration paid); Plaintiff's performance or nonperformance of  
24 the contract; the facts constituting Defendants' breach; and  
25 whether Plaintiff's damages were caused by Defendants' breach.  
26 4 Witkin, Pleading §§ 476-501. The complaint fails to allege the  
27 fraud with particularity, and omits essential components of a fraud  
28 claim such as that Defendants' intended to deceive Plaintiff; that  
Plaintiff actually relied on Defendants' false statements and that

1 such reliance was justifiable; and that damage resulted to  
2 Plaintiff from his justifiable reliance on the false statements. 5  
3 Witkin, Pleading §§ 668-89; Fed. R. Civ. P. 9(b).

4 Once a party's default has been entered, the court has  
5 discretion to grant default judgment against that party. Aldabe v.  
6 Aldabe, 616 F.2d 1089, 1092-93 (9th Cir. 1980). Default judgment  
7 is not appropriate when the complaint fails to state a claim upon  
8 which relief may be granted. E.g. Interscope Records v. Rodriguez,  
9 2007 WL 2408484 (S.D. Cal. 2007).

10 Accordingly, by separate order, the court vacates the  
11 evidentiary hearing to determine the amount of Plaintiff's damages  
12 and directs Plaintiff to amend his complaint to state claims upon  
13 which relief may be granted. Fed. R. Civ. Proc. 12(b)(6).

14 **\*\*END OF MEMORANDUM\*\***  
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Court Service List

Iain A. Macdonald, Esq.  
Heather A. Cutler, Esq.  
Macdonald and Associates  
221 Sansome Street, Third Floor  
San Francisco, CA 94104

Royal Spring Water  
Agent for Service of Process  
3027 East Sunset Road, Ste. 103  
Las Vegas, NV 89120

Alex Hazan  
468 North Camden Drive, Ste. 200  
Beverly Hills, CA 90210