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**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

\* \* \*

ANAHUAC MANAGEMENT, a Nevada Corporation,

Plaintiff,

vs.

KEITH A. MAZER, an individual; WORLD CAPITAL FUNDING, LLC, an entity of unknown provenance; and DOES 1 through 50, inclusive,

Defendants.

KEITH A. MAZER,

Counterclaim Plaintiff,

vs.

ANAHUAC MANAGEMENT,

Counterclaim Defendant.

KEITH A. MAZER,

Third-Party Plaintiff,

vs.

JEHU HAND,

Third-Party Defendant.

Case No.: 2:09-cv-01590-RLH-PAL

**ORDER**

(Motion to Dismiss, or in the Alternative, Motion to Stay; and Motion to Strike—#31)

1 Before the Court is Plaintiff/Counter-Defendant Anahuac Management  
2 (“Anahuac”) and Third-Party Defendant Jehu Hand’s **Motion to Dismiss Second Cause of Action**  
3 **or in the Alternative, Motion to Stay, and Motion to Strike Third-Party Complaint** (#31, filed  
4 Oct. 27, 2010) for failure to state a valid or derivative claim. The Court has also considered  
5 Defendant/Counter-Claim Plaintiff Keith A. Mazer and Defendant World Capital Funding, LLC’s  
6 (“World Capital”) Opposition (#34, filed Nov. 15, 2010), and Anahuac’s Reply (#36, filed Nov.  
7 29, 2010).

### 8 BACKGROUND

9 Anahuac alleges that in 2007, Mazer, acting on behalf of World Capital, contacted  
10 Yuri Semenov, the president of Anahuac, to discuss purchasing a convertible debenture (the  
11 “Debenture”) issued by a company that would later merge with Cleantech Biofuels, Inc  
12 (“Cleantech”). Semenov allegedly agreed to Defendants’ proposal and subsequently purchased the  
13 Debenture. Semenov then converted the Debenture into common stock and requested the stock  
14 from Defendants. However, according to Anahuac, Defendants never intended to give possession  
15 of the stock to Anahuac and now seek “stock power” allowing Defendants to transfer the shares to  
16 a third person without ever giving them to Anahuac or compensating Anahuac.

17 As to the counterclaims and third-party claims, Mazer alleges that Jehu Hand  
18 operates Anahuac as his alter ego and, therefore, Mazer and Hand’s relationship is tied into  
19 Anahuac’s claims. Mazer alleges that he and Hand participated in at least two joint ventures and  
20 other money matters and that Hand currently owes Mazer approximately \$1.8 million. Because  
21 Hand could not pay this debt, Hand retained Mazer to consult on the purchase of the Cleantech  
22 stock. Hand and Anahuac, however, never compensated Mazer for his service.

23 On December 29, 2008, Anahuac filed suit in Nevada state court against  
24 Defendants. Defendants subsequently removed the case to this Court on the basis of federal  
25 subject matter jurisdiction. On November 11, 2009, Anahuac filed an Amended Complaint (#11),  
26 alleging claims for: (1) fraud in violation of 15 U.S.C. § 78(j) (“SEC Rule 10b-5” or “Rule 10b-

1 5d”); (2) violation of the Nevada Uniform Securities Act (NRS §§ 90.310, 90.570, 90.610); (3)  
2 fraud; (4) negligent misrepresentation; (5) breach of fiduciary duty; (6) conversion; and (7) breach  
3 of contract. On September 16, 2010, Defendants filed their Answer (#25), which included  
4 Mazer’s counterclaims against Anahuac and third-party complaint against Jehu Hand. Mazer  
5 alleges claims for: (1) breach of contract; (2) setoff; and (3) unjust enrichment.

6 On May 6, 2009, Mazer filed suit in Antigua and Barbuda (the “Antigua Suit,”  
7 “Antigua”) against Hand related to the debts Mazer alleges. As it relates to this case, Mazer seeks  
8 setoff in his third-party complaint of the debt being adjudicated in Antigua against any recovery by  
9 Anhuac. He seeks setoff of these debts claiming that Hand operates Anahuac as his alter ego and,  
10 therefore, the Court may reverse-pierce the corporate veil to attribute Hand’s alleged acts and debts  
11 to Anahuac the corporate entity. Thus, Mazer claims, any debt or judgment that he owes Anahuac  
12 is properly setoff by Hand’s debt.

13 Currently before the Court is Plaintiff Anahuac and Third-party Defendant Hand’s  
14 motion. Essentially, Anahuac and Hand ask the Court to either dismiss Mazer’s setoff claim or  
15 stay the case pending resolution of the Antigua Suit and separately to strike Mazer’s setoff claim  
16 from the third-party complaint as not derivative of Anahuac’s claims against Mazer. For the  
17 reasons discussed below, the Court grants the motion to dismiss and denies the motion to strike as  
18 moot.

## 19 DISCUSSION

### 20 I. Motion to Dismiss Second Cause of Action

#### 21 A. Legal Standard

22 A court may dismiss a plaintiff’s complaint or any individual cause of action for  
23 “failure to state a claim upon which relief can be granted.” Fed. R. Civ. P. 12(b)(6). A properly  
24 pled complaint must provide “a short and plain statement of the claim showing that the pleader is  
25 entitled to relief.” Fed. R. Civ. P. 8(a)(2); *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555  
26 (2007). While Rule 8 does not require detailed factual allegations, it demands “more than labels

1 and conclusions” or a “formulaic recitation of the elements of a cause of action.” *Ashcroft v. Iqbal*,  
2 129 S. Ct. 1937, 1949 (2009) (citing *Papasan v. Allain*, 478 U.S. 265, 286 (1986)). “Factual  
3 allegations must be enough to rise above the speculative level.” *Twombly*, 550 U.S. at 555. Thus,  
4 to survive a motion to dismiss, a complaint must contain sufficient factual matter to “state a claim  
5 to relief that is plausible on its face.” *Iqbal*, 129 S. Ct. at 1949 (internal citation omitted).

6 In *Iqbal*, the Supreme Court recently clarified the two-step approach district courts  
7 are to apply when considering motions to dismiss. First, a district court must accept as true all  
8 well-pled factual allegations in the complaint; however, legal conclusions are not entitled to the  
9 assumption of truth. *Id.* at 1950. Mere recitals of the elements of a cause of action, supported only  
10 by conclusory statements, do not suffice. *Id.* at 1949. Second, a district court must consider  
11 whether the factual allegations in the complaint allege a plausible claim for relief. *Id.* at 1950. A  
12 claim is facially plausible when the plaintiff’s complaint alleges facts that allows the court to draw  
13 a reasonable inference that the defendant is liable for the alleged misconduct. *Id.* at 1949. Where  
14 the complaint does not permit the court to infer more than the mere possibility of misconduct, the  
15 complaint has “alleged—but not shown—that the pleader is entitled to relief.” *Id.* (internal  
16 quotation marks omitted). When the claims in a complaint have not crossed the line from  
17 conceivable to plausible, plaintiff’s complaint must be dismissed. *Twombly*, 550 U.S. at 570.

18 **B. Analysis**

19 Anahuac and Hand seek to have the Court dismiss Mazer’s claim for setoff.  
20 Mazer’s setoff claim is based on an alleged debt Hand owes Mazer which is currently being  
21 litigated and determined in Antigua. “Setoff is a doctrine used to extinguish the mutual  
22 indebtedness of parties who *each owe a debt to one another.*” *Aviation Ventures, Inc. v. Joan*  
23 *Morris, Inc.* 110 P.3d 59, 63 (Nev. 2005) (emphasis added). Since Mazer alleges that Hand owes  
24 him money rather than Anahuac, the Court would have to reverse pierce the corporate veil and  
25 attribute Hand’s alleged debts to Anahuac in order to apply setoff, which Mazer argues the Court  
26 should do as Anahuac is merely Hand’s alter ego. Reverse piercing allows a party to seek damages

1 against a corporate entity where “the corporation is acting as the alter ego of a controlling  
2 individual.” *LFC Marketing Group, Inc. v. Loomis*, 8 P.3d 841, 845 (Nev. 2000). The alter ego  
3 doctrine is meant to provide protection when a person abuses the corporate form and a Court may  
4 reverse pierce to provide this protection when a party abuses the corporate form. *Id.* at 845–46.

5 Here, however, Mazer has failed to plead sufficient facts showing that Anahuac is  
6 Hand’s alter ego and therefore his setoff claim fails. Mazer’s complaint merely alleges that  
7 Anahuac is Hand’s alter ego, repeating the elements necessary for alter ego liability, without the  
8 necessary facts to support the allegation. The mere recitation of elements of cause of action are  
9 insufficient to make a claim facially plausible. Without sufficient facts to support a finding of  
10 alter ego, the Court may not reverse pierce and apply Hand’s alleged debt to Anahuac and  
11 therefore cannot apply setoff. Further, the Court notes that as a general rule unmatured,  
12 unliquidated, or contingent claims and debts cannot be used for setoff. *FDIC v. Liberty Nat. Bank*  
13 *& Trust Co.*, 806 F.2d 961, 968 (9th Cir. 1986). Therefore, the Court dismisses Mazer’s claim for  
14 setoff.

15 **II. Mazer’s Third-party Complaint**

16 Anahuac and Hand also request the Court to strike Mazer’s setoff claim arguing  
17 that the claim is improper under Fed. R. Civ. P. 14(a)(4) because it is not derivative of Anahuac’s  
18 claims against Mazer. Since the Court has already dismissed the claim, the Court denies the  
19 motion as moot.

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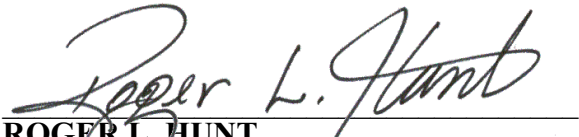
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**CONCLUSION**

Accordingly, and for good cause appearing,  
IT IS HEREBY ORDERED that Anahuac and Hand's Motion to Dismiss (#31) is  
GRANTED.

IT IS FURTHER ORDERED that Anahuac and Hand's Motion to Strike (#31) is  
DENIED.

Dated: March 24, 2011.

  
**ROGER L. HUNT**  
Chief United States District Judge