

1 **PAUL BATTISTA (BAR NO. 222288)**
2 **MINDFUSION LAW CORPORATION**
3 1875 Century Park East, 6th Floor
4 Los Angeles, CA 90067
5 Telephone: (310) 407-5380
6 Facsimile: (310) 407-5499

7 Attorney for Plaintiff:
8 **C.T.E. PRODUCTIONS, INC.**

FILED
LOS ANGELES SUPERIOR COURT

DEC 04 2007

JOHN A. CLARKE, EXECUTIVE OFFICER/CLERK
BY Irene Ayala
IRENE AYALA, DEPUTY

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE
10 COUNTY OF LOS ANGELES - BURBANK COURTHOUSE

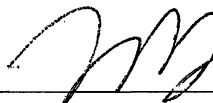
11 C.T.E. Productions, Inc.,) Case No.: ES011067
12 Plaintiff) [Assigned to Hon. Michael S.
13 vs.) Mink]
14 Eric Louzil,)
15 Defendant) **ORDER GRANTING JUDGMENT**
16) **CREDITOR C.T.E. PRODUCTIONS,**
17) **INC.'S MOTION TO AMEND JUDGMENT**
18) **TO ADD ALTER EGO OF JUDGMENT**
19) **DEBTOR NEWMARK/ECHELON**
20) **ENTERTAINMENT GROUP, LLC**
21) **Date: November 30, 2007**
22) **Time: 8:30 a.m.**
23) **Dept.: B (Dept. B was**
24) **unavailable and motion was**
25) **heard in Dept. G)**
26)

27 The motion of judgment creditor, C.T.E. Productions, Inc., for
28 an order to amend the judgment to add Mr. Eric Louzil as an
29 additional judgment debtor to the "Judgment On Order Confirming
30 An Arbitration Award", entered in this action on January 29,
2007, having come regularly for hearing on November 30, 2007,
and good cause appearing therefore,

**ORDER GRANTING JUDGMENT CREDITOR C.T.E. PRODUCTIONS, INC.'S
MOTION TO AMEND JUDGMENT TO ADD ALTER EGO OF JUDGMENT DEBTOR
NEWMARK/ECHELON ENTERTAINMENT GROUP, LLC**

1 IT IS HEREBY ORDERED that the motion is granted and Eric Louzil
2 will be added to the "Judgment On Order Confirming An
3 Arbitration Award" as an additional judgment debtor.

4
5
6 Dated this 4th day of December
2007

7
8 By: 
9 HON. ZAVEN V. SINANIAN
10 Los Angeles Superior Court

1 **PAUL BATTISTA (BAR NO. 222288)**
2 **MINDFUSION LAW CORPORATION**

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4 Los Angeles, CA 90067
5 Telephone: (310) 407-5380
6 Facsimile: (310) 407-5499

ORIGINAL FILED

OCT 26 2007

LOS ANGELES
SUPERIOR COURT

7 Attorney for Plaintiff:
8 **C.T.E. Productions, Inc.**

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE
10 COUNTY OF LOS ANGELES - NORTH CENTRAL DISTRICT

11 C.T.E. Productions, Inc., a New York
12 corporation
13 Plaintiff,
14 vs.

15 Mr. Eric Louzil, an individual
16 Defendant

17) **Case No.: ES011067**
18)
19) **NOTICE OF MOTION AND MOTION TO**
20) **AMEND JUDGMENT TO ADD MR. ERIC**
21) **LOUZIL AS AN ADDITIONAL JUDGMENT**
22) **DEBTOR (ALTER EGO) OF JUDGMENT**
23) **DEBTOR NEWMARK/ECHELON**
24) **ENTERTAINMENT GROUP, LLC UNDER**
25) **CALIFORNIA CODE OF CIVIL PROCEDURE**
26) **SECTION 187; MEMORANDUM OF POINTS**
27) **AND AUTHORITITES IN SUPPORT OF**
28) **MOTION**
29)
30) **Date: November 30, 2007**
) **Time: 8:30 am**
) **Dept: B**
)
) **Honorable Michael S. Mink**
)
) **Judgment Entered: January 29, 2007**

31 To Newmark/Echelon Entertainment Group, LLC, judgment debtor:

32 PLEASE TAKE NOTICE that on Friday, November 30, 2007 at 8:30 a.m., or as soon thereafter
33 as the matter may be heard in Department B of the above titled court located at 300 East Olive
34 Avenue, Burbank, California, Judgment Creditor, C.T.E. Productions, Inc. will and hereby does,
35 move to amend the judgment to add Mr. Eric Louzil as an additional judgment debtor to the

1 Judgment On Order Confirming An Arbitration Award, entered in this action on January 29,
2 2007.

3 This motion is based on the facts demonstrating that Mr. Eric Louzil is the alter ego of
4 judgment debtor Newmark/Echelon Entertainment Group, LLC. This motion is based on the fact
5 that the arbitrator did not have the authority to add an alter ego but only the Superior Court has
6 jurisdiction pursuant to *California Code of Civil Procedure Section 187* to amend the award to
7 add an alter ego.

8 This motion is based on this notice of motion, the motion, the memorandum of points and
9 authorities and attached exhibits and all of the files and papers on file with the court along with
10 any argument presented at the hearing on this motion.

11 For all of the foregoing reasons, judgment creditor C.T.E. Productions, Inc. requests entry
12 of an amended judgment adding Mr. Eric Louzil as an additional judgment debtor.

13
14
15
16 DATED: OCTOBER 26, 2007

MINDFUSION LAW CORPORATION

17
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19 

20 Paul Battista

21 Attorney for Plaintiff/Judgment

22 Creditor C.T.E. PRODUCTIONS, INC.
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1 Petitioner C.T.E. Productions, Inc. submits this Memorandum of Points and Authorities
2 in Support of Plaintiff’s Motion To Amend A Judgment To Add Mr. Eric Louzil As An
3 Additional Judgment Debtor Under California Code of Civil Procedure (“CCP”) Section 187.
4

5 **I. INTRODUCTION**

6 Plaintiff, C.T.E. Productions, Inc. (“CTE”) and Newmark/Echelon Entertainment Group,
7 LLC (“Newmark/Echelon”) entered into a contract as of October 26, 2004 in which
8 Newmark/Echelon agreed to provide “up to a hundred thousand dollars” to theatrically release
9 Plaintiff’s film entitled “Walking On the Sky.” Plaintiff filed an arbitration claim alleging
10 breach of contract. Mr. Eric Louzil attended an arbitration hearing in pro per on behalf of
11 Newmark/Echelon on June 27, 2006. On July 24, 2006, the arbitrator submitted an award which
12 was mailed concurrently to Plaintiff and Mr. Eric Louzil.

13 On January 29, 2007, the Honorable Michael S. Mink signed an order entering judgment
14 confirming the arbitration award. (A true and correct copy of the Signed Judgment is attached
15 hereto as Exhibit 1).

16 Plaintiff is filing this Memorandum of Points and Authorities in Support of Plaintiff’s
17 Motion To Amend The Judgment To Add Mr. Eric Louzil As An Additional Judgment Debtor of
18 Judgment Debtor Newmark/Echelon under *California Code of Civil Procedure Section 187*.
19

20 **II. SUMMARY OF ARGUMENT**

21 There are two elements that an alter ego plaintiff must prove: 1) That “there is such a
22 unity of interest between the corporation and another person or entity that they have no separate
23 existence”; and 2) That an inequitable result would follow if the corporation alone is held liable
24 for the contract or tort. Mr. Eric Louzil, an owner, the managing member and controlling
25 member of Newmark/Echelon failed to: adequately capitalize Newmark/Echelon in fact leaving
26 the company to do corporate business without providing any sufficient basis of financial
27 responsibility to creditors and leaving the company with an amount of capital that is illusory and
28 trifling compared with the business to be done and the risk of loss; Mr. Eric Louzil failed to
29 observe legal formalities in the operation of Newmark/Echelon in Nevada and California; Mr.
30 Louzil commingled company and personal assets paying for company liabilities with his

1 personal credit card; and Mr. Louzil used Newmark/Echelon as a mere shell, instrumentality and
2 conduit for his individual business.

3
4 **III. MEMORANDUM OF POINTS AND AUTHORITIES ARGUMENT**

5 **a. PURSUANT TO SECTION 187 OF THE CALIFORNIA CODE OF CIVIL**
6 **PROCEDURE, THE COURT IS AUTHORIZED TO ADD AS AN ADDITIONAL**
7 **JUDGMENT DEBTOR A PERSON THAT IS AN ALTER EGO OF THE**
8 **ORIGINAL JUDGMENT DEBTOR**

9 Pursuant to section 187 of the California Code of Civil Procedure, a court is authorized to
10 amend a judgment to add as an additional judgment debtor a person or entity that is the alter ego
11 of the original judgment debtor and that controlled the litigation. *Hall, Goodhue, Haisley &*
12 *Barker, Inc. v. Marconi Conference Center Board* (1996) 41 Cal. App. 4th 1551, 1555; *Jack*
13 *Farenbaugh & Son v. Belmont Construction, Inc.* (1987) 194 Cal. App. 3d 1023. The court in
14 *Hall, Goodhue, Haisley & Barker, Inc. v. Marconi Conference Center Board* ruled that the
15 amendment to add an additional judgment debtor also applies to cases involving the amendment
16 of a judgment confirming an arbitration award.

17 The evidence establishing alter ego liability may be presented in the original proceeding or on the
18 hearing of the motion, and the court may admit extrinsic evidence to show both the relationship
19 between the corporation and such individual and the fact that such individual was the
20 corporation's alter ego. *Farenbaugh & Son v. Belmont Construction, Inc.* (1987) 194 Cal. App.
21 3d 1023, 1029.

22 The Plaintiff has attempted to satisfy the original judgment from Newmark/Echelon but
23 to date the full judgment amount, \$51,674.50, remains unsatisfied.

24
25 **b. MR. LOUZIL PERSONALLY CONTROLLED THE INITIAL ARBITRATION**

26 Correcting the judgment to bind the alter ego is only appropriate if the person or entity
27 sought to be added as a judgment debtor actually controlled the initial litigation, personally or
28 through a representative, and had occasion to conduct it with a diligence corresponding to the
29 risk of personal liability involved. *NEC Electronics, Inc. v. Hurt* (1989) 208 Cal. App. 3d 772,
30

1 778-779. Actual control contemplates some active defense. *NEC Electronics, Inc. v. Hurt* (1989)
2 208 Cal. App. 3d 772, 781.

3 Mr. Eric Louzil personally controlled the initial arbitration of CTE v. Newmark/Echelon.
4 Mr. Louzil appeared on June 27, 2006 at the arbitration hearing “on the behalf of
5 Newmark/Echelon Entertainment Group, LLC.” (A true and correct copy of the Award of
6 Arbitrator, p. 4, attached hereto as Exhibit 2). Mr. Louzil testified and presented evidence
7 regarding Newmark/Echelon’s defense to the claims (Exhibit 2, p. 5). Mr. Louzil submitted a
8 closing brief and supporting documents in which he named the defendants as “in Pro Per” and
9 which he signed. (A true and correct copy of DEFENDANT NEWMARK/ECEHLON
10 ENTERTAINMENT GROUP, LLC CLOSING BRIEF AND SUPPORTING DOCUMENTS
11 attached hereto as Exhibit 3). Mr. Louzil left the arbitration hearing and filed a stolen property
12 report against Carl Evans (the writer/director of the film and President of CTE), regarding the
13 videotapes of the film underlying the arbitration proceeding. This letter was signed by Mr.
14 Louzil as the managing member of Newmark/Echelon. (A true and correct copy of the Letter
15 dated June 27, 2006 attached hereto as Exhibit 4). Mr. Louzil also received and reviewed CTE’s
16 final brief’s and exhibits and responded to the submissions. (A true and correct copy of the Letter
17 dated July 19, 2006 attached hereto as Exhibit 5).

18 Mr. Louzil provided an active defense in the underlying arbitration. He received the
19 documentation regarding the underlying arbitration from CTE and the arbitrator, he identified
20 himself as the “in Pro Per” defendant and he presented his legal briefs, evidence and arguments
21 at the arbitration and in subsequent correspondences. (See Exhibit 3, p. 1). Mr. Louzil
22 controlled the initial arbitration and had occasion to conduct it with a diligence corresponding to
23 the risk of personal liability involved.

24
25 **c. MR. ERIC LOUZIL, AS MANAGING MEMBER OF NEWMARK/ECHELON**
26 **ENTERTAINMENT GROUP, LLC, SHOULD BE SUBJECT TO LIABILITY UNDER**
27 **THE COMMON LAW GOVERNING ALTER EGO LIABILITY AND SHOULD**
28 **THEREFORE BE PERSONALLY LIABLE FOR THE OBLIGATION OF**
29 **NEWMARK/ECHELON TO CTE**
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1. Overview

California law allows limited liability companies (“LLC”) to protect managing members from personal liability for the debts and obligations of the LLC. However, the legal protection for managing members can be ignored in certain circumstances when the company is determined to be merely the alter ego of the members.

2. California Law

(i) Under the *Beverly-Killea Limited Liability Company Act*, section 17101 (b), a member of a limited liability company shall be subject to liability under the common law governing alter ego liability, and shall also be personally liable...for any debt, obligation, or liability of the limited liability company, whether that liability or obligation arises in contract, tort or otherwise, under the same or similar circumstances and to the same extent as a shareholder of a corporation may be personally liable for any debt, obligation or liability of the corporation. Also see, *People v. Pacific Landmark* (App. 2 Dist. 2005) 29 Cal. Rptr. 3d. 193, 129 Cal. App. 4th 1203.

(ii) The general rules governing the application of this doctrine are well established in California. There are two elements that an alter ego plaintiff must prove:

- 1) That “there is such a unity of interest between the corporation and another person or entity that they have no separate existence”; and
- 2) That an inequitable result would follow if the corporation alone is held liable for the contract or tort.

Automotriz del Golfo v. Resnick (1957) 47 C.2d. 792, 796, 306 P.2d. 1; *Laird v. Capital Cities/ABC, Inc.* (1998), 68 Cal. App. 4th 727; *Sonora Diamond Corp. v. Superior Court* (2000) 83 Cal. 4th 523, 528. If a plaintiff proves the two elements, then the members controlling the LLC must be held personally liable for the company’s debt, obligation or liability.

(iii) Whether these requirements are met is a question of fact, not law. *NEC Electronics, Inc. v. Hurt* (1989) 208 Cal. App. 3d. 772, 777. In discussing the doctrine of alter ego, the California Supreme Court has held that “there is no litmus test to determine when the corporate veil will be pierced; rather, the result will depend on the circumstances of each case.” *Mesler v. Bragg Management Co.*, 39 Cal 3d 290, 216 Cal Rptr. 443 (485). Some of the factors to be

1 evaluated in determining “unity of interest” and whether an “inequitable result would follow”
2 include:

- 3 1) financial issues, such as the failure to adequately capitalize the company or a total
4 absence of company assets;
- 5 2) corporate formality issues, such as whether the company was properly formed and
6 whether legal formalities were observed;
- 7 3) ownership issues, such as who comprises the management and ownership of the
8 company;
- 9 4) commingling issues, such as whether members commingle company and personal
10 assets and whether the company is used as a mere shell, instrumentality or conduit for
11 the business of the individual;

12 *Weschler v. Macke International Trade, Inc.* 327 F. Supp. 2d 1139 (C. D. Cal. 2004); *Nilsson,*
13 *Robbins, Dalgarn, Berliner, Carson & Wurst v. Louisiana Hydrolic*, 854 F.2d 1538 (9th Cir.
14 1988) ; *Automotriz del Golfo de California S.A. v. Resnick*, 47 Cal.2d 792 (Cal. 1957); *Jack*
15 *Farenbaugh & Son v. Belmont Construction, Inc.*, 194 Cal. App. 3d. 1023 (Cal Appeal 2d Dist.
16 1987).

17 **3. The Facts Of This Motion For Additional Judgment Debtor**

18 (i) NEWMARK/ECHELON FAILS TO ADEQUATELY CAPITALIZE THE
19 COMPANY, and, has a TOTAL ABSENCE OF CORPORATE ASSETS as evidenced by the
20 following:

21 (1) Mr. Louzil has provided bank statements for Newmark/Echelon for the time
22 period of August 1, 2003 through December 30, 2005. (A true and correct copy of the
23 Bank Statements attached hereto as Exhibit 6). Mr. Louzil has stated that this was the
24 only bank account maintained for Newmark/Echelon. (A true and correct copy of Letter
25 dated July 6, 2006 attached hereto as Exhibit 7).

26 A review of the bank statements provided by Mr. Louzil for Newmark/Echelon shows
27 that the company carried an **average ending monthly balance of one hundred and**
28 **twenty-four dollars and twenty-two cents, \$124. 22.** $([\$76.26 + \$64.26 + \$442.26 +$
29 $\$40.26 + \$28.26 + \$16.26 + \$4.26 + (-\$7.74) + (-\$19.74) + \$983.76 + (-\$62.74) + (-$
30 $\$74.74) / 12]$. (See Exhibit 6).

1 Newmark/Echelon is in the business of theatrically releasing films in many markets, up to
2 “2500 theatres.” (See Copy of www.echelonent.com, Echelon Website, attached hereto
3 as Exhibit 8). Newmark/Echelon claims to provide “an all-inclusive media, marketing,
4 and distribution alliance.” (A true and correct copy of www.echelonent.com, Echelon
5 Website, attached hereto as Exhibit 9). Newmark/Echelon in fact entered a contract with
6 CTE in which Newmark/Echelon promised to “spend up to a hundred thousand dollars
7 “on the marketing of CTE’s film (A true and correct copy of Theatrical Contract,
8 Paragraph, 21, p. 8, attached hereto as Exhibit 10).

9
10 Mr. Louzil clearly has undercapitalized the company in that it is unreasonable to argue
11 that an average monthly balance of \$124.22 is sufficient capital to conduct the business
12 of this company, and certainly not sufficient capital to fulfill the express terms of the
13 contract with CTE in which it was promised that up to one hundred thousand dollars was
14 to be expended on the marketing for the theatrical release of CTE’s film. Clearly, less
15 than \$200 is an amount that is “trifling with the business done and the risk of loss” (See
16 *Minton v. Cavaney*, 56 Cal.2d 576 (1961)) inherent in Newmark/Echelon’s business of
17 theatrically releasing numerous films in many markets “up to 2500 theaters.”

18
19 (2) Mr. Eric Louzil signed a check dated July 8, 2005 that was provided to Mr.
20 Karl Hirsch for work on the Film in the amount of one thousand dollars (\$1,000.00) on
21 the “Newmark/Echelon Entertainment Group, LLC’s Bank of America” account which
22 was returned for insufficient funds/account closed (A true and correct copy of
23 Declaration of Mr. Karl Hirsch attached hereto as Exhibit 11; and a true and correct copy
24 of Check and “Account Charged” attached hereto as Exhibit 12).

25
26 (3) Mr. Karl Hirsch attempted to receive the remaining five hundred dollars
27 (\$500.00) owed to him by Newmark/Echelon by calling and e-mailing the company.
28 After receiving no response he filed a claim in Small Claims Court. Not one
29 representative from Newmark/Echelon appeared at the trial and default judgment was
30 entered. Mr. Hirsch subsequently filed and received a writ of execution of

1 “Newmark/Echelon Entertainment Group, LLC’s Bank of America” account which was
2 returned because “no funds available as of January 31, 2006.” (See Exhibit 11; and a
3 true and correct copy of Memorandum of Garnishee attached hereto as Exhibit 13).
4

5 (4) According to the express terms of the agreement (Exhibit 10),
6 Newmark/Echelon agreed to “spend up to a hundred thousand dollars on the marketing”
7 of the theatrical distribution of the Film. (See Exhibit 10, Paragraph, 21, p. 8).
8 Newmark/Echelon holds itself out to be in the business of distributing independent
9 motion pictures, yet, Mr. Louzil decided not to provide the funds necessary to capitalize
10 Newmark/Echelon to meet its contractual obligations to CTE (A true and correct copy of
11 email of Mr. Eric Louzil attached hereto as Exhibit 14).
12

13 (5) Mr. Eric Louzil signed a check dated July 8, 2005 that was provided to
14 Dominion3 for work on CTE’s film in the amount of five hundred dollars (\$500.00) on
15 the “Newmark/Echelon Entertainment Group, LLC’s Bank of America” account which
16 was returned for insufficient funds/account closed (See Copy of Declaration of Ms. Kim
17 Dixon attached hereto as Exhibit 15; and Copy of Check and “Bank Advice of Returned
18 Item” attached hereto as Exhibit 16). Mr. Louzil decided not to provide the capital to
19 satisfy this obligation despite the fact that Mr. Louzil chose to deposit \$5,484.88 from
20 July, 2005 through December, 2005 to satisfy other creditors. (Exhibit 6).
21

22 (6) Dominion3 continues to be owed a balance of \$3,000.00 from
23 Newmark/Echelon. (Exhibit 15).
24

25 (7) The status of Newmark/Echelon Entertainment Group, LLC was revoked in
26 Nevada because of its failure to pay filing fees regarding the annual list of managing
27 members. (A true and correct copy of “Certificate of Existence With Status Revocation”
28 attached hereto as Exhibit 17). Newmark/Echelon fails to provide even the minimal
29 capital necessary to observe corporate formalities required to afford limited liability
30 protection.

1
2 (8) Plaintiff, CTE, filed a writ of execution which was served by the Burbank
3 Sheriff's Department. The writ of execution was returned to CTE unpaid with a notice
4 "unable to locate". (A true and correct copy of Memorandum of Garnishee attached
5 hereto as Exhibit 18).

6
7 ii) MR. LOUZIL HAS FAILED TO SEGREGATE FUNDS FROM SEPARATE
8 ENTITIES, COMMINGLED CORPORATE AND PERSONAL FUNDS and MR. LOUZIL
9 HELD HIMSELF OUT AS LIABLE FOR DEBTS OF NEWMARK/ECHELON.

10 Echelon paid for expenses for the film "Walking On the Sky" from an "Echelon
11 Entertainment 2" checking account and also paid other film expenses from a personal credit
12 cards(See Exhibit 7).

13 Mr. Louzil stated that "some bills for 'Walking On the Sky' (CTE's film underlying this
14 claim) were paid for by Echelon Entertainment as well as by my personal credit cards." He
15 further states, "What I specifically said was that I only put money into the Newmark/Echelon
16 Entertainment Group, LLC bank account on an 'as needed' basis to cover the bills that I wish to
17 pay for through that account." (See Exhibit 7).

18 The facts prove that Mr. Louzil failed to segregate funds from Newmark/Echelon
19 Entertainment Group, LLC, his personal credit accounts and another company, Echelon
20 Entertainment 2 (See also Copy of Check From Echelon Entertainment 2 Signed By Mr. Louzil
21 To Pay For Expenses of the film "Walking On the Sky" attached hereto as Exhibit 19); Mr.
22 Louzil thereby commingled corporate and personal funds; and by paying for obligations of
23 Newmark/Echelon with his personal credit cards, he held himself out as liable for
24 Newmark/Echelon's debts.

25
26 iii) NEWMARK/ECHELON DISREGARDS THE CORPORATE FORMALITIES.
27 Newmark/Echelon's limited liability company status has been revoked in Nevada since
28 September 1, 2005 and they have not reinstated the company with the State as required by law to
29 conduct business. (See Exhibit 17) Further Newmark/Echelon Entertainment Group, LLC has
30 never been registered with the State of California as required to by law for foreign limited

1 liability companies that do business in this state. (A true and correct copy of Certificate of
2 Nonfiling attached hereto as Exhibit 20) although the company shows a California address and
3 entered into its contract with CTE in California (See Exhibit 10, Heading, p. 1). Maintaining
4 LLC status in the state of filing and complying with the filing laws of any state in which one is
5 doing business are minimum requirements when seeking to avail oneself of the limited liability
6 protection of LLCs.

7
8 iv) MR. LOUZIL HAS USED NEWMARK/ECHELON AS A MERE SHELL AND
9 CONTRACTS WITH OTHERS TO AVOID PERFORMANCE BY USING THE CORPORATE
10 SHIELD AGAINST PERSONAL LIABILITY (I.E., SUBTERFUGE).

11 Mr. Louzil has been forthright in revealing that he decides when he wants to pay a bill
12 and that he then pays it by placing money in the Newmark/Echelon bank account. By his own
13 admission, Mr. Louzil only puts money into the company as he deems necessary (See Exhibit 7).
14 The bank statements provided by Mr. Louzil corroborate his claim in that the average monthly
15 balance of the account was one hundred and twenty-four dollars (\$124.22), however, he decided
16 to deposit one hundred and ninety-nine thousand, one hundred and twenty five dollars and four
17 cents (\$199,125.04) during the time period. The entire amount, less an average ending monthly
18 balance of \$124.22, was spent on expenses other than on CTE's expenses which were
19 contractually owed to CTE. (See Exhibit 6)

20 It is not that Mr. Louzil did not, or does not, have the money to pay legitimate creditors
21 such as CTE, it is that he uses the corporate shield to protect himself against claims and
22 judgments that are entered against Newmark/Echelon in a "cat and mouse" game of creditors
23 executing writs of execution in hopes of catching a day that Mr. Louzil has decided to put money
24 into the Newmark/Echelon bank account for other creditors.

25 This is a design by Mr. Louzil to use Newmark/Echelon as a mere shell to avoid paying
26 legitimate obligations not deemed "worthy" of payment by Mr. Louzil.

27
28 **4. Review of Cases Applicable To This Motion**
29 **For Substitute Judgment Debtor Support The Conclusion**
30 **That There Is Such a Unity of Interest Between**

1 In *Nilsson*, the court stated that the corporation's undercapitalization is clear. The facts
2 that the individual failed to treat the corporation as a separate entity and guaranteed loans to the
3 corporation, together with the fact that the individual controlled the activities of the corporation
4 was more than enough evidence to support a finding of a unity of interests. *Nilsson*, p. 1544

5 The court then stated that based upon the evidence if the individual were allowed to
6 escape liability for his actions an inequitable result would follow. Thus, both prongs of the test
7 were satisfied and the plaintiff met its burden to prove the alter ego theory. *Nilsson*, p. 1544.

8 The following facts regarding this motion are on point to the relevant factors cited by the
9 court in *Nilsson*: 1) Mr. Louzil is the only Managing Member of Newmark/Echelon and he
10 stated in numerous letters that he has the authority to act on behalf of Newmark/Echelon (See
11 Exhibits 3, 4, 5, and Copy of Declaration of Eric Louzil attached hereto as Exhibit 21); 2) The
12 undercapitalization of Newmark/Echelon is clear since the company carried an average balance
13 of one hundred and twenty-four dollars and twenty-two cents (\$124.22) and Newmark/Echelon
14 has no other assets (See Exhibit 6); 3) Mr. Louzil stated that he decides when to place money
15 into the Newmark/Echelon account on an "as needed" basis, thus being the sole source of
16 funding for the company (See Exhibit 7); 4) Mr. Louzil stated that he paid for some of the
17 expenses of Newmark/Echelon by using his personal credit cards, thereby also becoming
18 personally liable for such company debts (See Exhibit 7).

19 The court in *Nilsson* further stated:

20
21 The unity of interest required under California
22 law does not require a demonstration of complete
23 ownership. California considers a host of relevant
24 factors to finding a unity of interest. One highly
25 relevant factor in determining a unity of interest
26 is undercapitalization...In this case...
27 undercapitalization is clear. In addition, (the individual)
28 failed to treat the company as a separate entity.
29 He guaranteed loans for the corporation and paid
30 some of its bills from his account. These facts
together with the individuals control over the
activities of the corporation are more than enough
evidence to support a finding of a unity of interests. *Nilsson*, p.1544

The court concluded that if the individual were allowed to escape liability for his actions,
an inequitable result would follow. Thus, both prongs of the test for alter ego were satisfied.

1 The facts stated herein together with Mr. Louzil's stated control of the activities of
2 Newmark/Echelon are also more than enough evidence to support a finding of a unity of interests
3 and finding that if Mr. Louzil were allowed to escape liability for his actions an inequitable result
4 would follow.

5
6 *(b) Automotriz del Golfo de California S.A. v. Resnick, 47 Cal.2d 792 (Cal. 1957)*

7 Plaintiff, a foreign corporation, brought an action for the balance due on the price of eight
8 automobiles which it alleged were sold to the defendants. The trial court found for the plaintiff
9 and the defendants appealed.

10 The court stated that the failure to issue stock or to apply at any time for a permit,
11 although not conclusive evidence, is an indication that the defendants were doing business as
12 individuals. The court further reviewed whether the defendant "carried on its business without
13 substantial capital in such a way that the corporation is likely to have no sufficient assets
14 available to meet its debts." The court stated that:

15
16 the attempt to do corporate business without
17 providing any sufficient basis of financial
18 responsibility to creditors is an abuse of the
19 separate entity and will be ineffectual to
20 exempt the shareholders from corporate debts....
21 shareholders should in good faith put at the risk
22 of the business unencumbered capital reasonably
23 adequate for its prospective liabilities. If the capital
24 is illusory or trifling compared with the business to
25 be done and the risk of loss, this is a ground for
26 denying the separate entity privilege. *Automotriz*, p. 797.

27 The defendants testified that the sum of \$5,000 became a part of the capital of the
28 corporation, and the appellate court ruled that even if the trial court believed the defendants, it
29 could have inferred that \$5,000 was an insufficient capital investment in view of the volume of
30 business conducted.

The following facts regarding this motion are on point to the relevant factors cited by the
court in *Automotriz*: 1) Mr. Louzil has provided bank statements evidencing an average monthly
balance of \$124.22 for the operating of Newmark/Echelon's theatrical film distribution business.
This is clearly an amount of capital that is trifling compared to the up to one hundred thousand
dollars (\$100,000.00) Newmark/Echelon contracted with CTE to spend on the marketing and

PLAINTIFF/JUDGMENT CREDITOR'S MOTION TO AMEND A JUDGMENT TO ADD MR. ERIC LOUZIL AS AN ADDITIONAL JUDGMENT DEBTOR

1 release of CTE's film. (See Exhibits 6, 7, 8, 9 Exhibit 10, Paragraph, 21, p. 8). 2) CTE
2 borrowed and actually expended thirty-two thousand nine hundred and eighty-seven dollars and
3 nineteen cents (\$32,987.19) to cover the costs of the first two weeks of the theatrical release of
4 the film Newmark/Echelon was contractually obligated to spend one hundred thousand dollars to
5 theatrically release. (True and correct copies of Receipts of CTE's Expenditures attached hereto
6 as Exhibit 22). 3) The capital that Mr. Louzil provides to Newmark/Echelon is not
7 unencumbered capital reasonably adequate to provide for prospective liabilities.
8 Newmark/Echelon contractually obligated itself to spend up to one hundred thousand dollars to
9 theatrically release CTE's film and currently Newmark/Echelon states on its website that it
10 "acquires independent films for theatrical release and manages the film's release...
11 Newmark/Echelon Entertainment Group is able to release films in as little as 5 theaters, and as
12 many as 2500." An average monthly balance of one hundred and twenty-four dollars and
13 twenty-two cents is clearly an amount of capital that is illusory or trifling when compared with
14 the business to be done and the risk of loss. CTE's one film cost \$32,987.19 to release,
15 therefore, Newmark/Echelon should have capital available in multiples of \$32,987.19 to be able
16 to release the numerous films in up to 2500 theaters as Newmark/Echelon advertises it is capable
17 of providing.

18 The appellate court in *Automotriz* ruled that there was ample evidence in the record for
19 the finding of the trial court that the defendants were doing business as individuals and there is
20 ample evidence for the court to reach the same conclusion regarding Mr. Eric Louzil.

21
22 (c) *Jack Farenbaugh & Son v. Belmont Construction, Inc., 194 Cal. App. 3d. 1023 (Cal Appeal*
23 *2d Dist. 1987)*

24 The trial court granted the plaintiff/respondent's motion to amend a judgment obtained by
25 respondent against a corporate defendant (Belmont Construction, Inc., "Belmont") to include an
26 appellant who was not named in the original complaint nor in the original judgment as a
27 judgment debtor based on an alter ego theory.

28 The facts included that Belmont: 1) had no money and had not done business within the
29 previous two to five years; 2) that the corporation had no bank account, no equipment or small
30 tools; 3) a corporate information report showed that the corporate status of Belmont was

1 “suspended” by the Secretary of State of California; 4) the individual caused Belmont to go out
2 of business and disbursed all of its money and other assets to pay others, not including
3 respondent, thus leaving Belmont as a hollow shell without means to satisfy its existing and
4 potential creditors. The court ruled that the evidence presented was more than sufficient for the
5 trier of fact to find both unity of interest and ownership as well as an inequitable result if the alter
6 ego doctrine were not applied. *Jack Farenbaugh & Son*, pp. 1032-1033.

7 The following facts regarding this motion are on point to the relevant factors cited by the
8 court in *Farenbaugh & Son*: 1) Newmark/Echelon also does not comply with the statutory
9 requirements for a limited liability company to do business in that their Newmark/Echelon
10 Entertainment Group, LLC’s status has been revoked in Nevada since September 1, 2005 and
11 they have not re-instated the company with the State as required by law to conduct business.
12 (See Exhibit 17); 2) Newmark/Echelon Entertainment Group, LLC has never been registered
13 with the State of California as required to by law for foreign limited liability companies that do
14 business in this state. (See Exhibit 20). 3) Mr. Louzil has provided bank statements evidencing
15 an average monthly balance of \$124.22 for the operating of Newmark/Echelon’s theatrical film
16 distribution business. (See Exhibit 6) but he has clearly chosen to pay other creditors at his
17 discretion leaving other creditors unsatisfied; 4) The latest writ of attachment filed by CTE
18 found that a Newmark/Echelon bank account no longer seems to exist. (See Exhibit 18).

19 The appellate court in *Farenbaugh & Son* ruled that by causing Belmont to go out of
20 business and disbursing all of its monies and assets to pay others, not including *Jack Farenbaugh*
21 *& Son*, Belmont was left as a hollow shell without means of satisfying existing and potential
22 creditors and as such, the evidence was more than sufficient for the trier of fact to find both unity
23 of interest and ownership as well as an inequitable result if the alter ego doctrine were not
24 applied. Similarly, there is ample evidence for the court to reach the same conclusion regarding
25 Mr. Eric Louzil and Newmark/Echelon.

26 27 **IV. CONCLUSION**

28 For the foregoing reasons, the Court should grant the Plaintiff’s Motion To Amend The
29 Judgment To Add Mr. Eric Louzil As An Additional Judgment Debtor Under *CCP Section 187*.

1 DATED: October 26, 2007

MINDFUSION LAW CORPORATION

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4 _____
Paul Battista

5 Attorney for Plaintiff/Judgment Creditor

6 C.T.E. PRODUCTIONS, INC.
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