

ESTTA Tracking number: **ESTTA991936**

Filing date: **08/01/2019**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91239608
Party	Defendant Neal Technologies, Inc.
Correspondence Address	RICHARD L SCHWARTZ WHITAKER CHALK SWINDLE & SCHWARTZ PLLC 301 COMMERCE ST, STE 3500 FORT WORTH, TX 76102 UNITED STATES tgwynne@whitakerchalk.com, rschwartz@whitakerchalk.com 817-878-0500
Submission	Other Motions/Papers
Filer's Name	Richard L. Schwartz
Filer's email	tgwynne@whitakerchalk.com, rschwartz@whitakerchalk.com
Signature	/richard l Schwartz/
Date	08/01/2019
Attachments	motion to dismiss.pdf(826996 bytes )

UNITED STATES PATENT AND TRADEMARK OFFICE  
TRADEMARK TRIAL AND APPEAL BOARD

UNIQUE MOTORSPORTS, INC.	§	
	§	<b>Opposition No.: 91239608 (parent)</b>
Petitioner,	§	
	§	Serial No.: 87610052
v.	§	
	§	<b>Cancellation No.: 92067945</b>
NEAL TECHNOLOGIES, INC.	§	
	§	Registration Nos.: 5220129 and
Respondent.	§	5130772

**AMENDED MOTION FOR DISMISSAL OF OPPOSITION**  
**AND CANCELLATION PROCEEDINGS**

In response to the TTAB Orders dated July 17, 2019 and July 31, 2019, Neal Technologies, Inc. (NTI-Applicant and Respondent) files this its Amended Motion for Dismissal of Opposition and Cancellation Proceedings as originally initiated by Unique Motorsports, Inc. (UMI-Petitioner).

In support thereof, NTI shows:

1. On June 13, 2019, UMI's Chapter 7 Trustee's attorneys filed their "Motion for Order Approving Settlement Agreement" (the "Motion") in the United States Bankruptcy Court for the Eastern District of Texas, Sherman Division (the Bankruptcy Court), as set out in the attached **Exhibit A**. In the Motion, the pending TTAB actions are referenced as the "Administrative Proceedings" (paragraph 7). The Motion seeks Court approval of a Settlement Agreement that, *inter alia*, allows the Trustee to "take any and all actions to ensure that the Administrative Proceedings will be dismissed as soon as possible" (paragraph 12.b.).

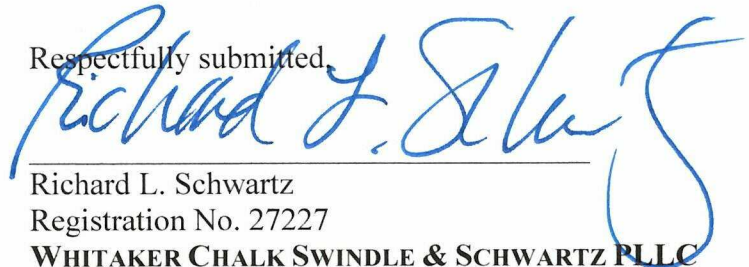
2. On July 11, 2019, the Bankruptcy Court entered its "Agreed Order Approving Settlement Agreement" (the Order), as set out in **Exhibit B**. The Order states, *inter alia*, that "the Administrative Proceedings (as defined in the Motion) shall be dismissed."

3. On July 23, 2019, after NTI satisfied other Settlement Agreement obligations, the attorneys for UMI's Chapter 7 Trustee executed the attached "Petitioner's Dismissal of the Opposition and Cancellation Proceedings" as attached hereto as **Exhibit C**. In the Petitioner's Dismissal, Petitioner "requests that the Opposition and Cancellation Proceedings be reopened and then, in turn, be dismissed with prejudice."

4. In view of the foregoing and with the joinder of UMI, NTI respectfully requests that the Opposition and Cancellation Proceedings be reopened and then, in turn, be dismissed with prejudice.

Date: August 1, 2019

Respectfully submitted,



Richard L. Schwartz

Registration No. 27227

**WHITAKER CHALK SWINDLE & SCHWARTZ PLLC**

301 Commerce Street, Suite 3500

Fort Worth, Texas 76102

TEL: 817.878.0500

FAX: 817.878.0501

E-mail: [rschwartz@whitakerchalk.com](mailto:rschwartz@whitakerchalk.com)

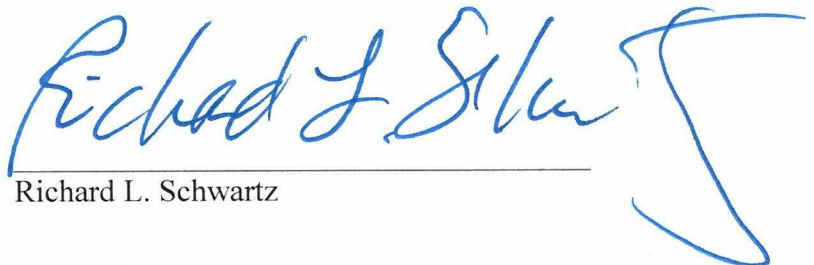
**ATTORNEYS FOR APPLICANT-RESPONDENT  
NEAL TECHNOLOGIES, INC.**

### **CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing document was served on this 1<sup>st</sup> day of August, 2019 via U.S. Mail, First Class, Certified Mail, Return Receipt Requested, postage prepaid upon:

Chris Moser  
CHAPTER 7 TRUSTEE FOR BANKRUPTCY  
ESTATE OF UNIQUE MOTORSPORTS, INC.  
2001 Bryan Street, Suite 1800  
Dallas, TX 75201

Dustin Helms  
UNIQUE MOTORSPORTS, INC.  
500 East State Hwy 121  
Lewisville, TX 75057



Richard L. Schwartz

# EXHIBIT A

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
SHERMAN DIVISION

IN RE: §  
UNIQUE MOTORSPORTS, INC., § CASE NO. 17-40218  
DEBTOR. § (Chapter 7)

**MOTION FOR ORDER APPROVING SETTLEMENT AGREEMENT**

**21-DAY NEGATIVE NOTICE – LBR 9007(a):**

Your rights may be affected by the relief sought in this pleading. You should read this pleading carefully and discuss it with your attorney, if you have one in this bankruptcy case. If you oppose the relief sought by this pleading, you must file a written objection, explaining the factual and/or legal basis for opposing the relief.

No hearing will be conducted on this Motion/Application unless a written objection is filed with the Clerk of the United States Bankruptcy Court and served upon the party filing this pleading **WITHIN TWENTY-ONE (21) DAYS FROM THE DATE OF SERVICE** shown in the certificate of service unless the Court shortens or extends the time for filing such objection. If no objection is timely served and filed, this pleading shall be deemed to be unopposed, and the Court may enter an order granting the relief sought. If an objection is filed and served in a timely manner, the Court will thereafter set a hearing with appropriate notice. If you fail to appear at the hearing, your objection may be stricken. The Court reserves the right to set a hearing on any matter.

**TO THE HONORABLE BRENDA T. RHOADES, U.S. BANKRUPTCY JUDGE:**

Christopher J. Moser, Chapter 7 Trustee (the “Trustee”) files this *Motion for Order Approving Settlement Agreement* (the “Motion”) seeking approval of a compromise and settlement agreement between the Trustee and Neal Technologies, Inc. (“NTI”) as follows:

**Jurisdiction, Venue, and Procedural Background**

1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334.

This matter constitutes a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

2. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.
3. On February 3, 2017, Unique Motorsports, Inc. (the “Debtor”) filed a voluntary

petition under Chapter 11 of the United States Bankruptcy Code, 11 U.S.C. §§ 101, *et seq.* (the “Bankruptcy Code”), in the U.S. Bankruptcy Court for the Eastern District of Texas, Sherman Division (the “Court”).

4. On September 19, 2018 (the “Conversion Date”), the Debtor’s bankruptcy case was converted to a case under Chapter 7 of the Bankruptcy Code.

5. The Trustee was thereafter appointed as the standing Chapter 7 Trustee for the Debtor’s bankruptcy estate (the “Estate”), and he continues to serve in that capacity.

**Statement of Facts**

6. Prior to the Conversion Date, the Debtor operated a diesel repair business in Lewisville, Texas. The Debtor was also a licensed car dealer, and its business included the operation of a “buy here, pay here” used car lot.

7. After commencing this bankruptcy case, but prior to the Conversion Date, the Debtor filed administrative proceedings against NTI with the U.S. Patent and Trademark Office related to certain trademarks held by NTI. These proceedings are identified as having Opposition No. 91239608 and Cancellation No. 92067945 (the “Administrative Proceedings”).<sup>1</sup> The Administrative Proceedings are within the Trustee’s control as property of the Estate.

8. The Administrative Proceedings do not present any opportunity for a monetary recovery by the Estate. Rather, the Administrative Proceedings were brought by the Debtor for the sole purpose of adjudicating the Debtor’s right to use certain trademarks and intellectual property that allegedly belong to NTI. Since the Debtor has elected to terminate its business and liquidate under Chapter 7, there is no value in pursuing the Administrative Proceedings. Moreover, the U.S.

<sup>1</sup> “Administrative Proceedings” shall include all proceedings brought by the Debtor against NTI before any agency or regulatory board of the United States federal government related to intellectual property owned or purportedly owned by NTI.

District Court for the Eastern District of Texas has previously ruled in favor of NTI on issues similar to those presented in the Administrative Proceedings. For these reasons, the Trustee believes that the Administrative Proceedings hold no value for the Estate.

9. The Trustee and NTI have reached an agreement to settle and resolve the Administrative Proceedings. The proposed agreement also involves the sale of certain Estate property to NTI.

10. As a result of the Debtor's used car lot operation, the Estate is now the payee on numerous outstanding promissory notes associated with seller-financed vehicle sales made by the Debtor. Several of these promissory notes have been collected by the Estate, but collectability has proven to be an issue and several notes remain outstanding and uncollected (the "*Outstanding Notes*"). The Trustee believes there will be significant difficulty and uncertainty in collecting amounts, if any, on the Outstanding Notes.

11. In consideration for the Estate's dismissal of the Administrative Proceedings and assignment of the Outstanding Notes, NTI will pay the Estate \$2,500.00. Based on the total amount of the Outstanding Notes, the challenges associated with collecting on the Notes, and the lack of value of the Administrative Proceedings to the Estate, the Trustee and NTI believe that \$2,500.00 represents fair consideration for the Settlement Agreement (defined below).

#### Settlement

12. The Trustee and NTI have agreed to settle and resolve all claims, demands, or causes of action between them related to the Administrative Proceedings on the following terms and conditions (the "*Settlement Agreement*"):

- a. In consideration for the Estate's dismissal of the Administrative Proceedings and the Estate's assignment of the Outstanding Notes to NTI, NTI will pay the Estate the total amount of \$2,500.00 within twenty-one (21) days of the Court's entry of its final order approving the Settlement

Agreement (the "*Settlement Order*").

- b. Upon the Trustee's timely receipt of \$2,500.00 from NTI, all of the Estate's interest in the Outstanding Notes will be transferred to NTI and the Trustee will take any and all actions necessary to ensure that the Administrative Proceedings will be dismissed as soon as possible.
- c. Upon the Court's entry of the Settlement Order: (i) NTI will release the Trustee and all of his representatives, agents, attorneys, and assigns from any and all claims, demands, and causes of action associated with the Administrative Proceedings; and (ii) the Trustee will release NTI and all of its representatives, agents, attorneys, and assigns from any and all claims, demands, and causes of action associated with the Administrative Proceedings.

13. The Trustee believes that the Settlement Agreement is in the best interest of the Estate and its creditors.

#### Relief Requested

14. Pursuant to Rule 9019(a) of the Federal Rules of Bankruptcy Procedure (the "*Bankruptcy Rules*"), the Trustee respectfully requests that this Court approve the Settlement Agreement and authorize the Trustee to execute any and all documents necessary to consummate the Settlement Agreement.

15. Bankruptcy Rule 9019(a) states that "[o]n motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement." Approval of the compromise or settlement is specifically "committed to the sound discretion of the Bankruptcy Court." *River City v. Herpel*, (*In re Jackson Brewing Co.*), 624 F.2d 599, 602-603 (5th Cir. 1980).

16. The compromise contained herein meets the standard set forth in *Protective Comm. for Independent Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, *reh'g denied*, 391 U.S. 909 (1968). In that case, the United States Supreme Court stated that the following factors are to be considered in determining the appropriateness of a compromise:

- a. the probabilities of ultimate success should the claim be litigated;

- b. an educated estimate of (i) the complexity, expense, and likely duration of such litigation, (ii) the possible difficulties of collecting on any judgment which might be obtained; and (iii) all other factors relevant to a full and fair assessment of the wisdom of the proposed compromise; and
- c. the comparison of the terms of the compromise with likely rewards of litigation.

*TMT Trailer Ferry*, 390 U.S. at 424-25. Further, in the case of *In re Jackson Brewing*, 624 F.2d at 602, the Fifth Circuit specified other considerations, e.g., (i) uncertainties of fact and law which impact the probability of success and litigation, and (ii) delay and inconvenience which impacts the complexity/duration of the litigation.

17. The Settlement Agreement described herein clearly meets the standards established by the United States Supreme Court and Fifth Circuit.

18. Accordingly, the proposed Settlement Agreement between the Trustee and NTI should be approved.

**WHEREFORE, PREMISES CONSIDERED**, the Trustee prays that this Court enter an order (i) approving the Settlement Agreement, (ii) authorizing the Trustee and NTI to execute any and all documents necessary to consummate the Settlement Agreement, and (iii) granting the Trustee such other and further relief to which he may be justly entitled.

*[Remainder of page left intentionally blank]*

Respectfully submitted,

**QUILLING, SELANDER, LOWNDS,  
WINSLETT & MOSER, P.C.**  
2001 Bryan Street, Suite 1800  
Dallas, Texas 75201  
(214) 871-2100 (Telephone)  
(214) 871-2111 (Telefax)

By: /s/ Joshua L. Shepherd  
Joshua L. Shepherd  
State Bar No. 24058104  
S. Kyle Woodard  
State Bar No. 24102661

ATTORNEYS FOR CHAPTER 7 TRUSTEE

**CERTIFICATE OF SERVICE**

I hereby certify that on June 13, 2019, a true and correct copy of the foregoing Motion was served via regular U.S. mail, postage prepaid upon all parties set forth on the attached service list.

/s/ Joshua L. Shepherd  
Joshua L. Shepherd

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
SHERMAN DIVISION

IN RE: §  
§  
UNIQUE MOTORSPORTS, INC., § CASE NO. 17-40218  
§ (Chapter 7)  
DEBTOR. §

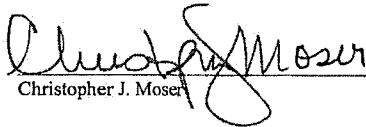
AFFIDAVIT OF CHRISTOPHER J. MOSER

STATE OF TEXAS §  
§  
COUNTY OF DALLAS §

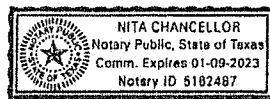
CHRISTOPHER J. MOSER ("Affiant"), being duly sworn, deposes and says:

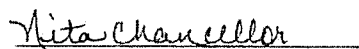
1. "My name is Christopher J. Moser. I am over the age of twenty-one and competent in all respects to make this Affidavit. I am the Chapter 7 Trustee in the above-referenced case.
2. This Affidavit is filed in conjunction with the *Motion for Order Approving Settlement Agreement* (the "*Motion*"), which is being filed contemporaneously with this Affidavit.
3. It is my professional opinion that the settlement agreement reflected in the Motion is in the best interest of the estate and comports with the settlement standards of *Protective Comm. For Independent Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, *Reh'g denied*, 391 U.S. 909 (1968) and of *River City vs. Herpel*, (*In re Jackson Brewing Co.*), 624 F.2d 599, 602-603 (5th Cir. 1980). Accordingly, the settlement should be approved."

FURTHER AFFIANT SAYETH NOT.

  
Christopher J. Moser

SWORN AND SUBSCRIBED BEFORE ME on this 11<sup>th</sup> day of June, 2019.



  
Nita Chancellor  
Notary Public for the State of Texas  
My Commission Expires: 1-9-2023

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
SHERMAN DIVISION

IN RE: §  
§  
UNIQUE MOTORSPORTS, INC., § CASE NO. 17-40218  
§ (Chapter 7)  
DEBTOR. §

AGREED ORDER APPROVING SETTLEMENT AGREEMENT

On this day came on for consideration the *Motion for Order Approving Settlement Agreement* (the "*Motion*") filed on June 13, 2019 by Christopher J. Moser, Chapter 7 Trustee (the "*Trustee*") for the bankruptcy estate in the above-captioned case (the "*Estate*"), seeking approval of the Settlement Agreement set forth in the Motion (the "*Settlement Agreement*") between the Trustee and Neal Technologies, Inc. ("*NTI*"). The Court finds that the Motion was properly served pursuant to the Federal and Local Rules of Bankruptcy Procedure and that it contained the appropriate twenty-one (21)-day negative notice language, pursuant to LBR 9007, which directed any party opposed to the granting of the relief sought by the Motion to file a written response within twenty-one days or the Motion would be deemed by the Court to be unopposed. The Court finds that no objection or other written response to the Motion has been timely filed by any party. Due to the failure of any party to file a timely written response, the allegations contained in the Motion stand unopposed and, therefore, the Court finds that good cause exists for the entry of the following order.

IT IS THEREFORE ORDERED that the Motion is **GRANTED** and the Settlement Agreement is hereby **APPROVED** on the terms and conditions set forth in the Motion.

IT IS FURTHER ORDERED that, pursuant to the Settlement Agreement, NTI shall pay the Estate the total amount of \$2,500.00 within twenty-one (21) days of the date of this Order.



IT IS FURTHER ORDERED that, upon the Trustee's timely receipt of \$2,500.00 from NTI, the Administrative Proceedings (as defined in the Motion) shall be dismissed and all of the Estate's interest in the Outstanding Notes (as defined in the Motion) shall be transferred to NTI.

IT IS FURTHER ORDERED that the Trustee and NTI are authorized to execute any and all documents necessary to effectuate the terms of the Settlement Agreement.

AGREED:

/s/ Joshua L. Shepherd  
Joshua L. Shepherd  
State Bar No. 24058104  
QUILLING, SELANDER, LOWNDS,  
WINSLETT & MOSER, P.C.  
2001 Bryan Street, Suite 1800  
Dallas, Texas 75201  
(214) 871-2100 (Telephone)  
(214) 871-2111 (Facsimile)

ATTORNEYS FOR TRUSTEE

/s/ J. Machir Stull  
Scott A. Fredricks  
State Bar No. 24012657  
J. Machir Stull  
State Bar No. 24070697  
CANTEY HANGER LLP  
1999 Bryan Street, Suite 3300  
Dallas, Texas 75201-3100  
(214) 978-4122 telephone  
(214) 978-4150 facsimile

ATTORNEYS FOR NTI

Label Matrix for Texas 0540-4 Case 17-40218 Eastern District of Texas Sherman Thu Jun 13 13:31:51 CDT 2019  Bobby Eugene Wills, Jr. c/o Bruce Condit 4080 Summerhill Square Texarkana, TX 75503-2730  CarBucks Floor Plan 417 Woods Lake Rd. Greenville, SC 29607-2777  Denton County c/o Tara LeDay P. O. Box 1269 Round Rock, TX 78680-1269  G. W. Roberts Law Firm, PLLC PO Box 250106 Plano, TX 75025 email: gwroberts@robertslawdallas.com phone 75025-0106  Nathan Hall 1609 Windmire Drive Mesquite, TX 75181-1553  Tara LeDay MYBA Law Firm P O Box 1269 Round Rock, TX 78680-1269  Michael S. Mitchell DeMarco-Mitchell, PLLC 1255 West 15th Street 805 Plano, TX 75075-7225  Neal Technologies 4245 E. Palm Street Mesa, AZ 85215-1142  Neal Technologies, Inc. c/o Richard L. Schwartz 301 Commerce St. City Center Tower II, Ste. 3500 Fort Worth, TX 76102-4140	Attorney General of Texas US Bankruptcy Reporting Contact OAG/CSO/Mail Code 38 P.O. Box 12017 Austin, TX 78711-2017  John & Paul Bosco P O Box 867 Lewisville, TX 75067-0867  Robert T. DeMarco DeMarco-Mitchell, PLLC 1255 West 15th St., 805 Plano, TX 75075-7225  Falcon Document Solutions 301 Commerce St., Ste 240 Ft. Worth, TX 76102-4142  G.W. Roberts Law Firm, PLLC P O Box 250106 Plano, TX 75025-0106  Internal Revenue Service - Centralized Insolvency Operations PO Box 7346 Philadelphia, PA 19101-7346  Marcus White 8101 Amistad Ct. Ft. Worth, TX 76137-5364  Christopher Moser 2001 Bryan Street, Suite 1800 Dallas, TX 75201-3070  Neal Technologies, Inc. 301 Commerce St. City Center Tower II, Ste 3500 Fort Worth, TX 76102-4140  NextGear Capital 11799 North College Ave. Camel, IN 46032-5605	Attorney General of Texas US Bankruptcy Reporting Contact Taxation Division - Bankruptcy Box 12548 Capitol Station Austin, TX 78711-2548  CarBucks Floor Plan 417 Woods Lake Rd. Greenville, SC 29607-2777  DeMarco Mitchell, PLLC 1255 West 15th Street Suite 805 Plano, TX 75075-7225  Scott A. Fredricks Cantey Hanger LLP 600 W 6th St Ste 300 Fort Worth, TX 76102-6898  Lynn A. Gross 4879 Geren Trail McKinney, TX 75071-7391  LP Litigation Paralegals, LLC 325 N. St. Paul St., Ste 3100 Dallas, TX 75201-3923  Marcus White C/O James L. Rogers Jr. 1413 Harroun Ave. McKinney, TX 75069-3430  NTTA Customer Service Center P O Box 260928 Plano, TX 75026-0928  Neal Technologies, Inc. c/o J. Machir Stull 1999 Bryan St., Suite 3300 Dallas, Texas 75201-6822  Timothy W. O'Neal Office of the U.S. Trustee 110 N. College Ave. Suite 300 Tyler, TX 75702-7231
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Case 17-40218 Doc 171-3 Filed 06/13/19 Entered 06/13/19 13:43:43 Desc Service List Page 2 of 3

W. Roberts Law Firm, PLLC Box 250106 Plano, TX 75025-0106	SAFE Protegga LLC 730 E. Park Blvd., Ste. 210 Plano, TX 75074-8850	100 F Street, NE Washington, DC 20549-2001
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Truist Bank  
Trustee Office  
1100 N. College Ave., Room 300  
Dallas, TX 75202-7231

Joshua Shepherd  
Quilling, Selander, Lownds,  
Winslett & Moser  
2001 Bryan Street, Suite 1800  
Dallas, TX 75201-3070

Robert A. Simon  
Whitaker Chalk Swindle & Schwartz, PLLC  
301 Commerce Street  
Suite 3500  
Fort Worth, TX 76102-4135

Matthew Stull  
Matthew Hanger LLP  
19 Bryan Street  
Suite 3300  
Dallas, TX 75201-6822

Texas Comptroller of Public Accounts  
Office of the Attorney General  
Bankruptcy Collections Div.  
P.O. Box 12548, MC-008  
Austin, TX 78711-2548

U.S. Attorney General  
Department of Justice  
Main Justice Building  
10th & Constitution Ave., NW  
Washington, DC 20530-0001

Trustee  
Office of the U.S. Trustee  
110 N. College Ave.  
Suite 300  
Dallas, TX 75202-7231

US Trustee  
110 N. College, Suite 300  
Tyler, TX 75702-7231

Unique Motorsports Inc  
500 E. State Highway 121 Business  
Lewisville, TX 75057-4788

United States Attorney  
110 North College Ave., Ste. 700  
Dallas, TX 75202-0204

United States Trustee  
110 North College Ave., Ste. 300  
Tyler, TX 75702-7231

Marcus White  
c/o James L. Rogers, Jr.  
1413 Harround Ave.  
McKinney, TX 75069-3430

by Eugene Willis  
Bruce Condit  
100 Summerhill Square  
Fayetteville, TX 75503-2730

Kyle Woodard  
Quilling, Selander, Lownds,  
Winslett Moser PC  
2001 Bryan Street, Suite 1800  
Dallas, TX 75201-3070

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Suite 240  
Worth, TX 76102-4142

(d)G.W. Roberts Law Firm, PLLC  
P O Box 250106  
Plano, TX 75025-0106

(d)John & Paul Bosco  
P.O. Box 867  
Lewisville, TX 75067-0867

LP Litigation Paralegals, LLC  
110 N. St. Paul St.  
Suite 3100  
Dallas, TX 75201-3923

(d)Christopher Moser  
2001 Bryan Street, Suite 1800  
Dallas, TX 75201-3070

(d)NTTA  
Customer Service Center  
PO Box 260928  
Plano, TX 75026-0928

Nathan Hall  
9 Windmill Drive  
Camel, TX 75181-1553

(d)NextGear Capital  
11799 North College Ave.  
Camel, IN 46032-5605

(d)SAFE Protegga LLC  
730 E. Park Blvd., Ste 210  
Plano, TX 75074-8850

Case 17-40218 Doc 171-3 Filed 06/13/19 Entered 06/13/19 13:43:43 Desc Service List Page 3 of 3

End of Label Matrix	
Mailable recipients	46
Bypassed recipients	9
Total	55

# EXHIBIT B

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
SHERMAN DIVISION

IN RE:	§	
	§	
UNIQUE MOTORSPORTS, INC.,	§	CASE NO. 17-40218
	§	(Chapter 7)
DEBTOR.	§	

**AGREED ORDER APPROVING SETTLEMENT AGREEMENT**

On this day came on for consideration the *Motion for Order Approving Settlement Agreement* (the “*Motion*”) filed on June 13, 2019 by Christopher J. Moser, Chapter 7 Trustee (the “*Trustee*”) for the bankruptcy estate in the above-captioned case (the “*Estate*”), seeking approval of the Settlement Agreement set forth in the Motion (the “*Settlement Agreement*”) between the Trustee and Neal Technologies, Inc. (“*NTI*”). The Court finds that the Motion was properly served pursuant to the Federal and Local Rules of Bankruptcy Procedure and that it contained the appropriate twenty-one (21)-day negative notice language, pursuant to LBR 9007, which directed any party opposed to the granting of the relief sought by the Motion to file a written response within twenty-one days or the Motion would be deemed by the Court to be unopposed. The Court finds that no objection or other written response to the Motion has been timely filed by any party. Due to the failure of any party to file a timely written response, the allegations contained in the Motion stand unopposed and, therefore, the Court finds that good cause exists for the entry of the following order.

**IT IS THEREFORE ORDERED** that the Motion is **GRANTED** and the Settlement Agreement is hereby **APPROVED** on the terms and conditions set forth in the Motion.

**IT IS FURTHER ORDERED** that, pursuant to the Settlement Agreement, NTI shall pay the Estate the total amount of \$2,500.00 within twenty-one (21) days of the date of this Order.

**IT IS FURTHER ORDERED** that, upon the Trustee's timely receipt of \$2,500.00 from NTI, the Administrative Proceedings (as defined in the Motion) shall be dismissed and all of the Estate's interest in the Outstanding Notes (as defined in the Motion) shall be transferred to NTI.

**IT IS FURTHER ORDERED** that the Trustee and NTI are authorized to execute any and all documents necessary to effectuate the terms of the Settlement Agreement.

Signed on 7/11/2019

Brenda T. Rhoades SR  
HONORABLE BRENDA T. RHOADES,  
UNITED STATES BANKRUPTCY JUDGE

**AGREED:**

/s/ Joshua L. Shepherd  
Joshua L. Shepherd  
State Bar No. 24058104  
QUILLING, SELANDER, LOWNDS,  
WINSLETT & MOSER, P.C.  
2001 Bryan Street, Suite 1800  
Dallas, Texas 75201  
(214) 871-2100 (Telephone)  
(214) 871-2111 (Facsimile)

**ATTORNEYS FOR TRUSTEE**

/s/ J. Machir Stull  
Scott A. Fredricks  
State Bar No. 24012657  
J. Machir Stull  
State Bar No. 24070697  
CANTEY HANGER LLP  
1999 Bryan Street, Suite 3300  
Dallas, Texas 75201-3100  
(214) 978-4122 telephone  
(214) 978-4150 facsimile

**ATTORNEYS FOR NTI**

# EXHIBIT C

UNITED STATES PATENT AND TRADEMARK OFFICE  
TRADEMARK TRIAL AND APPEAL BOARD

UNIQUE MOTORSPORTS, INC.	§	<b>Opposition No.: 91239608</b>
	§	
Petitioner,	§	Serial No.: 87610052
	§	
v.	§	<b>Cancellation No.: 92067945</b>
	§	
NEAL TECHNOLOGIES, INC.	§	Registration Nos.: 5220129
	§	and 5130772
Respondent.	§	

**PETITIONER'S DISMISSAL OF THE OPPOSITION AND CANCELLATION  
PROCEEDINGS**

By Order dated July 10, 2018, these proceedings were consolidated and thereafter suspended pending the conclusion of Petitioner's bankruptcy proceeding. Petitioner would show that subsequent to the above Order:

1. By Order of the Honorable Brenda T. Rhoades, U.S. Bankruptcy Court for the Eastern District of Texas, dated September 19, 2018, Petitioner's bankruptcy was converted from Chapter 11 (reorganization) of the Bankruptcy Code, 11 § U.S.C. §101, *et. seq.*, to Chapter 7 (liquidation) of the Bankruptcy Code;
2. Upon conversion of Petitioner's bankruptcy case to a Chapter 7 liquidation, Christopher J. Moser, was named the Chapter 7 Trustee for Petitioner, Unique Motorsports, Inc.;
3. The Chapter 7 bankruptcy proceeding is ongoing;
4. Upon Trustee's review of the Opposition and Cancellation Proceedings, and discussions with counsel for Respondent, Neal Technologies, Inc., Petitioner requests that the Opposition and Cancellation Proceedings be reopened, and then, in turn, dismissed with prejudice.


Date: July 23, 2019

Respectfully submitted,

**QUILLING, SELANDER, LOWNDS,  
WINSLETT & MOSER, P.C.**

2001 Bryan Street, Suite 1800  
Dallas, Texas 75201  
(214) 871-2100 (Telephone)  
(214) 871-2111 (Facsimile)

By:

  
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Joshua L. Shepherd  
State Bar No. 24058104  
S. Kyle Woodard  
State Bar No. 24102661

**ATTORNEYS FOR CHRISTOPHER J. MOSER,  
CHAPTER 7 TRUSTEE  
UNIQUE MOTORSPORTS, INC.**