

**EXHIBIT A**

**Settlement Agreement**

**EXECUTION VERSION**

**SETTLEMENT AGREEMENT**

This Settlement Agreement (this "Agreement") is executed on and is effective as of this 16th day of April, 2014 (the "Effective Date") by and among Elliott Mallard ("Mallard"), MFM Delaware, Inc., a Delaware corporation ("MFM Delaware"), MFM Industries, Inc., a Delaware corporation ("Industries"), DCP Investors, LLC, a Delaware limited liability company ("DCP"), and DCP Holdings, LLC, a Delaware limited liability company ("DCPI").<sup>1</sup>

**RECITALS:**

WHEREAS MFM Delaware and Industries each filed Chapter 11 cases with the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court") on May 28, 2013 (the "Petition Date"). The bankruptcy case for MFM Delaware is Case No. 13-11359-PJW, and the bankruptcy case for Industries is Case No. 13-11360-PJW (the cases together are referred to herein as the "Bankruptcy Cases"). MFM Delaware and Industries are sometimes individually and collectively referred to herein as the "Debtors."

WHEREAS prior to the commencement of the Bankruptcy Cases, Mallard served as the President and Chief Executive Officer of MFM Delaware, Industries, and their affiliates (collectively, the "Companies"). Pursuant to that certain Agreement, dated November 20, 2012 (the "November 2012 Agreement"), Mallard resigned as President and CEO of the Companies effective December 3, 2012, and was appointed Chief Scientist and Business Improvement Officer through June 1, 2013. Also pursuant to the November 2012 Agreement, Industries agreed to assume all obligations associated with that certain promissory note in favor of DCPI and/or DCP or its successors, executed on or about October 7, 2008 (the "Note").

WHEREAS, on January 25, 2013, the Companies and Mallard entered into that certain Separation Agreement, dated January 25, 2013 (the "Separation Agreement"), under which the Companies agreed to pay Mallard severance pay in the amount of \$4,542 per week for 39 weeks.

WHEREAS following the execution of the Separation Agreement, Industries paid to Mallard on account of the Companies' obligations under the Separation Agreement approximately \$68,130, \$59,046 of which was paid by checks dated within 90 days of the Petition Date and all of which was paid by checks dated within one year of the Petition Date.

WHEREAS on September 18, 2013, Mallard filed a proof of claim in the Bankruptcy Court—Claim Number 61—against Industries (the "Claim") in the amount of \$109,008 for payments remaining under the Separation Agreement.

WHEREAS on February 3, 2014, the Debtors objected to the Claim [Dkt. No. 359].

WHEREAS Mallard has informally responded to the Debtors' objection to the Claim and asserts certain defenses to the objection.

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<sup>1</sup> Mallard, MFM Delaware, Industries, DCPI and DCP shall be collectively referred to herein as the "Parties."

WHEREAS the Parties have agreed to resolve the objection to the Claim and all other potential disputes and claims between the Parties pursuant to the terms below.

**AGREEMENTS:**

In consideration of the mutual agreements herein contained, the benefits to be received by the Parties, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is agreed as follows:

1. **Recitals.** The foregoing recitals are true and correct and are incorporated herein by reference to the extent necessary to interpret or enforce this Agreement.

2. **Effective Date.** The Effective Date shall be the 15<sup>th</sup> day after the entry of an order of the Bankruptcy Court approving this Agreement (the "Approval Order") unless a subsequent order staying the Approval Order is entered.

3. **The Claim.** Subject to the terms of this Agreement, Mallard hereby consents to the entry of an order disallowing and expunging the Claim in its entirety.

4. **Releases.**

a. **Release by DCP and DCPI.** As of the Effective Date, subject to the provisions of this Agreement, DCP and DCPI, individually and on behalf of their administrators, predecessors, successors, assigns, shareholders, direct and indirect subsidiaries, affiliates, officers, managers, employees, directors, agents and attorneys (collectively, the "DCP Releasors") hereby forever release Mallard and his heirs, administrators, predecessors, successors and assigns from any and all debts, claims, demands, liabilities, damages, actions, and causes of action (whether at law or in equity) and obligations of every kind and nature whatsoever, whether liquidated or unliquidated, known or unknown, matured or unmatured, fixed or contingent that the DCP Releasors had against Mallard related to or arising from the Note arising on or prior to the Effective Date.

b. **Release by Mallard.** As of the Effective Date, subject to the provisions of this Agreement, Mallard, individually and on behalf of his heirs, administrators, predecessors, successors and assigns (collectively, the "Mallard Releasors") hereby forever releases the Debtors, DCP, and DCPI, their successors, assigns, shareholders, direct and indirect subsidiaries, affiliates, officers, managers, employees, directors, agents and attorneys (the "MFM and DCP Releasees") from any and all debts, claims, demands, liabilities, responsibilities, disputes, damages, actions and causes of action (whether at law or in equity) and obligations of every kind and nature whatsoever, whether liquidated or unliquidated, known or unknown, matured or unmatured, fixed or contingent that Mallard had against any of the MFM or DCP Releasees arising on or prior to the Effective Date.

c. **Release by Debtors.** As of the Effective Date, subject to the provisions of this Agreement, Debtors, individually and on behalf of their administrators, predecessors, successors and assigns, shareholders, direct and indirect subsidiaries, affiliates, officers,

managers, employees, directors, agents and attorneys (collectively, the “MFM Releasers”) hereby forever release Mallard and his heirs, administrators, predecessors, successors and assigns from any and all debts, claims, demands, liabilities, responsibilities, disputes, damages, actions and causes of action (whether at law or in equity) and obligations of every kind and nature whatsoever, whether liquidated or unliquidated, known or unknown, matured or unmatured, fixed or contingent that the MFM Releasers had against Mallard, including, but not limited to, actions arising under Chapter 5 of the United States Bankruptcy Code, arising on or prior to the Effective Date.

5. **Bankruptcy Court Approval.** This Agreement is expressly subject to and contingent upon its approval by the Bankruptcy Court. The Debtors shall file promptly with the Bankruptcy Court a motion seeking the entry of the Approval Order approving this Agreement. If this Agreement, or any portion hereof, is not approved by the Bankruptcy Court, or if it is overturned or modified on appeal, this Agreement shall be void and of no further force and effect, and, in such event, (a) neither this Agreement nor any negotiations and writings in connection with this Agreement shall in any way be construed as or deemed to be evidence of or an admission on behalf of any of the Parties hereto regarding any claim or right that they may have against any or all of the Parties hereto, and (b) the Parties shall be entitled to pursue their respective claims and defenses in the above-captioned cases.

6. **Choice of Law; Venue.** The Parties agree that the provisions hereof shall be governed by the laws of the State of Delaware and that venue for any dispute arising out of this Agreement shall be solely and exclusively in the Bankruptcy Court.

7. **Miscellaneous.** The Parties hereto each agree as follows:

a. **Time.** Time is the essence of each provision of this Agreement.

b. **Binding Effect.** This Agreement will inure to the benefit of and bind the respective successors and permitted assigns of the Parties.

c. **Attorneys’ Fees.** If any Party institutes an action against the other Party relating to the provisions of this Agreement or any default hereunder, the prevailing Party to such action shall be entitled to recover the reasonable attorneys’ fees, disbursements and other litigation expenses incurred by them.

d. **Severability.** If any provision of this Agreement is determined by a court having jurisdiction to be illegal, invalid or unenforceable under any present or future law, the remainder of this Agreement will not be affected thereby. It is the intention of the Parties that if any provision is so held to be illegal, invalid or unenforceable, there will be added in lieu thereof a provision as similar in terms to such provision as is possible that is legal, valid and enforceable.

e. **Headings.** The headings used in this Agreement are for ease in reference only and are not intended to affect the interpretation of this Agreement in any way.

f. **Amendment.** Neither this Agreement nor any of the provisions hereof can be changed, waived, discharged or terminated, except by an instrument in writing signed

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by the Party against whom enforcement of the change, waiver, discharge or termination is sought.

g. Construction. The Parties acknowledge that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting Party will not be employed in the interpretation of this Agreement.

h. No Waiver. No waiver of any action or default by any Party will be implied from the failure or delay by any other Party to take any action in respect of such action or default. No express waiver of any condition precedent or default will affect any other default or extend any period of time for performance other than as specified in such express waiver. One or more waivers of any default in the performance of any provision of this Agreement will not be deemed a waiver of any subsequent default in the performance of the same provision or any other provision. The consent to or approval of any act or request by any Party will not be deemed to waive or render unnecessary the consent to or approval of any subsequent similar act or request. The partial exercise of any right or remedy under this Agreement will not preclude any other or further exercise thereof or the exercise of any other right or remedy. No course of dealing between the Parties will be deemed to amend the terms of this Agreement or to preclude any Party from exercising the rights and remedies herein contained notwithstanding such course of dealing. The rights and remedies provided in this Agreement are cumulative and no right or remedy will be exclusive of any other, or of any other right or remedy at law or in equity which any Party might otherwise have by virtue of a default under this Agreement and the exercise of any right or remedy by any Party will not impair such Party's standing to exercise any other right or remedy.

i. Counterparts. This Agreement may be executed in any number of counterparts, including facsimile copies, each of which may be executed by only one Party, which shall be enforceable against the Parties actually executing such counterparts, and all of which together shall constitute one instrument. Facsimile signature transmitted via electronic transmission may be utilized.

j. Notices. Any notices or other communications or deliveries which may be required or desired to be given under the terms of this Agreement shall be in writing and shall be deemed to have been duly given if personally delivered, or upon transmittal if sent by overnight courier (e.g., Federal Express), or upon actual receipt or upon receipt if mailed by United States certified mail, return receipt requested, postage prepaid, addressed to the respective Party at the addresses set forth below:

If to Debtors:           Matthew Crane  
                                  3300 SW 34th Ave. Suite 112  
                                  Ocala, FL 34474

                                  Arthur Steinberg  
                                  King & Spalding LLP  
                                  1185 Avenue of the Americas

New York, NY 10036-2601

If to Mallard:

Elliott Mallard  
1108 S.E. 48<sup>th</sup> Avenue  
Ocala, FL 34471

Evan Miller  
Bayard, P.A.  
222 Delaware Avenue, Suite 900  
P.O. Box 25130  
Wilmington, DE 19899

If to DCP:

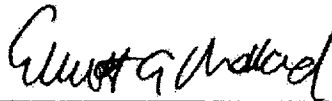
DCP Investors LLC  
c/o Hugh Levey  
1370 Avenue of the Americas, 27<sup>th</sup> Floor  
New York, NY 10019

*[Signature Pages Follow.]*

A handwritten signature in black ink, appearing to be "EJM", located in the bottom right corner of the page.

**IN WITNESS WHEREOF**, the Parties have executed this Settlement Agreement on the date set forth above.

ELLIOTT MALLARD



\_\_\_\_\_  
Elliott Mallard

MFMD DELAWARE, INC.

By: Matthew A. Crane  
Matthew A. Crane, President/CEO

MFM INDUSTRIES, INC.

By: Matthew A. Crane  
Matthew A. Crane, President/CEO

DCP INVESTORS, LLC

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

DCP HOLDINGS, LLC

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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