# EXHIBIT A

DOCKET ALARM
Find authenticated court documents without watermarks at docketalarm.com.

(rev. 10/15/15)

# SUPREME COURT OF THE STATE OF NEW YORK
## COUNTY OF ONONDAGA
## COMMERCIAL DIVISION

**PRESIDING JUSTICE: HON. ANTHONY J. PARIS**

**Carl Weiss, Ann Weiss**

Plaintiff(s),

-v-

**Zellar Homes, Ltd, et al**

Defendant(s).

**PRELIMINARY CONFERENCE STIPULATION AND ORDER**

**Commercial Division**

Index No.: **2016EF993**
RJI No.: **33-17-0200**

*All items on this form must be completed unless inapplicable.*
*Use additional pages, if necessary.*

(1) **Appearances:**

**Counsel for Plaintiff(s):**

Client's Name: Carl Weiss and Anne Weiss
Lead Counsel's Name: Michael J. Balestra, Esq.
Firm Name and Address: Menter, Rudin & Trivelpiece, PC
308 Maltbie Street, Syracuse, New York 13204
Telephone Number: 315.474.7541
Facsimile Number: 315.474.4040
Email Address: mbalestra@menterlaw.com

**Counsel for Defendant(s):**



DOCKET ALARM Find authenticated court documents without watermarks at docketalarm.com.

Client's Name: See Attached list

Lead Counsel's Name: _____

Firm Name and Address: _____

_____

Telephone Number: _____

Facsimile Number: _____

Email Address: _____

**Counsel for Defendant(s):**

Client's Name: _____

Lead Counsel's Name: _____

Firm Name and Address: _____

_____

Telephone Number: _____

Facsimile Number: _____

Email Address: _____

(2) **Pertinent Dates:**

a. Date of Commencement: 3/14/16

b. Date of Joinder: 4/8/16

c. RJI Date: 1/18/17

(3) **Nature of Case:**

*Pursuant to 22 NYCRR 202.12(c)(1), provide a brief description of the factual and legal issues raised in the pleadings.*

a. The legal theories and salient facts supporting plaintiff's claims are: Breach of contract by Zellar Homes to construct Plaintiffs' residence. Diversion of trust funds by Zellar Homes and David Zellar individually.

Relief Demanded: Damages for breach of contract; accounting and damages on behalf of **

b. Defendant Zellar Homes 's claims. If issue has been joined, the legal



**all trust fund beneficiaries under Lien Law Article 3-A.



DOCKET ALARM Find authenticated court documents without watermarks at docketalarm.com.

theories and salient facts supporting defendant Zellar Homes, Ltd.'s defenses, counterclaims and third-party claims are Failure to state a cause of action upon which relief may be granted, lack of subject matter jurisdiction, lack of capacity to sue, relief is limited by written contract/agreement, contribution, unjust enrichment, and breach of contract.

Relief Demanded: Dismiss Plaintiff's claims, and $214,711.32 in damages for unjust enrichment or $253,359.36 in damages for breach of contract, reasonable costs and fees (including atty's fees)

c. Defendant David Zellar's claims. If issue has been joined, the legal theories and salient facts supporting defendant David Zellar's defenses, counterclaims and third-party claims are lack of personal jurisdiction, failure to state a cause of action upon which relief may be granted, lack of subject matter jurisdiction, and lack of capacity to sue.

Relief Demanded: Dismiss Plaintiff's claims with prejudice, grant David Zellar reasonable costs and fees (including attorney's fees).

(4) **Attorneys' Consultation:**

The parties consulted in a good faith effort to reach agreement on the issues identified in Uniform Commercial Division Rule 8.* Agreement was reached as follows:

| ISSUE DISCUSSED | DATE OF CONSULTATION | AGREEMENT REACHED (Y or N) |
|---|---|---|
| Resolution of the case | | |
| Fact discovery including methods, timing and scope | | |
| Expert disclosure including designation, timing and scope | | |
| The use of ADR | | |
| Voluntary and informal exchange of information | | |
| Confidentiality and privilege | | |
| The scope, extent, order and form of production | | |
| The anticipated cost and burden of data recovery and proposed initial allocation of such costs | | |

* Concerning electronic discovery, see Item (8)d below.

COMMENTS: _____



DOCKET ALARM Find authenticated court documents without watermarks at docketalarm.com.

(5) **Impleader**: Do you anticipate the need to add parties? If so, who and when? Robin Curtis, March 2017

Note: *Impleader must be completed no later than 15 days after the end of the last party deposition.*

(6) **Early Disposition**:

a. This case is appropriate for early disposition by:

i. _____ the accelerated adjudication procedures of the Commercial Division of the Supreme Court as set forth in Uniform Commercial Division Rule 9

ii. _____ ADR (identify type and timing)_____

iii. _____ limited issue discovery in aid of an early dispositive motion or settlement (identify type and timing) _____

iv. _____ dispositive motion that will be filed on or before _____

v. _____ other (identify type and timing) _____

b. This case is not appropriate for early disposition because previous settlement negotiations have failed; too many factual issues for a dispositive motion.

(7) **Confidentiality Order:**

The court recognizes that most cases in the Commercial Division involve highly sensitive information. In such cases, the parties may be directed to enter into a Confidentiality Agreement that the court will "So Order." The parties are encouraged to use the model



DOCKET ALARM Find authenticated court documents without watermarks at docketalarm.com.

DOCKET ALARM

# Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

## Real-Time Litigation Alerts

Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

## Advanced Docket Research

With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

## Analytics At Your Fingertips

Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

## API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

**LAW FIRMS**
Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

**FINANCIAL INSTITUTIONS**
Litigation and bankruptcy checks for companies and debtors.

**E-DISCOVERY AND LEGAL VENDORS**
Sync your system to PACER to automate legal marketing.