

**EXHIBIT D**

**9/8/16 Builders FirstSource-Southeast Group,  
LLC's Motion to Compel and Motion for  
Determination of Setoff**

STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS  
 ) FOR THE NINTH JUDICIAL CIRCUIT  
 COUNTY OF CHARLESTON ) CASE NO.: 2012-CP-10-7594

One Bell Hall Property Owners )  
 Association, Inc. and Marvin T. Meek and, )  
 Francis E. Hill, individually, and on behalf )  
 of all others similarly situated, )

Plaintiffs,

vs.

Builders FirstSource –Southeast Group, )  
 LLC; )  
 Defendant. )

**DEFENDANT’S NOTICE OF MOTION  
 AND MOTION TO COMPEL AND  
 MOTION FOR DETERMINATION OF  
 SETOFF**

FILED  
 2016 SEP -8 PM 2:51  
 JULIE J. ARMSTRONG  
 CLERK OF COURT  
 BY \_\_\_\_\_

Defendant Builders FirstSource-Southeast Group, LLC. (“BFS”), by its undersigned attorneys, respectfully submits this Motion to Compel and Motion for Determination of Setoff.

This case concerns alleged construction defects to a development of condominiums known as One Belle Hall, located in Mt Pleasant, South Carolina (“the Project”). The Project consists of four three-story buildings that contain fifty-nine units in total.

The buildings were constructed by Trammel Crow Residential through the use of various subcontractors and vendors. Certificates of Occupancy were issued on the buildings between December 18, 2006 and March 5, 2007. BFS was the supplier of the vinyl Energy Saving Products windows, which were installed at the project during original construction.

Beginning on August 29, 2016 a jury trial was held with Judge Goodstein presiding, which resulted in a September 1, 2016 verdict in favor of Plaintiff in the amount of \$2,163,000.00 on the breach of express and implied warranties and strict liability causes of action.

Defendant BFS, the supplier of the windows, was one of several defendants sued jointly for proximately causing the damage to the Project and more specifically, for the damage the windows

caused through the selection and/or installation of the product. Plaintiff has reached settlements with all co-defendants except BFS in exchange for releases or covenants not to execute. BFS is not in possession of the settlement terms or documents related thereto and moves before the Court to compel the production of the various releases or covenants not to execute granted by Plaintiff to each co-defendant. Thereafter, pursuant to S.C. Code § 15-38-50, BFS will move to seek a determination by the Court of the amount of setoff to be taken against the judgment awarded by the jury.

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By: 

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ATTORNEY FOR DEFENDANT BUILDERS  
FIRSTSOURCE-SOUTHEAST GROUP, LLC

August 7, 2016

Charleston, South Carolina

2012-CP-10-7594

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this date, Defendant Builders FirstSource - Southeast Group, LLC's *Notice of Motion and Motion to Compel and Motion for Determination of Setoff* was sent via email, hand delivery and/or by depositing a copy in the United States Mail, First Class, to:

Justin O'Toole Lucey, Esquire  
Dabny Lynn, Esquire  
Taylor M. Morris, Esquire  
JUSTIN O'TOOLE LUCEY, P.A.  
415 Mill Street  
Mt. Pleasant, SC 29464  
*Attorneys for Plaintiffs*

KERNODLE COLEMAN

  
Michelle Justman

September 7, 2016  
Charleston, South Carolina

FILED  
2016 SEP -8 PM 2:52  
JULIE J. ARMSTRONG  
CLERK OF COURT

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF CHARLESTON )  
 )  
 One Belle Hall Propoerty Owners Association, Inc. )  
 and Brady Ramey; individually, and on behalf of all )  
 others similarly situated, )  
 Plaintiff, )  
 vs. )  
 Builders FirstSource-Southeast Group, et al. )  
 Defendant. )

IN THE COURT OF COMMON PLEAS  
 NINTH JUDICIAL CIRCUIT

CASE NO.: 2012-CP-10-7594

MOTION AND ORDER INFORMATION

FORM AND COVERSHEET

<b>Plaintiff's Attorney:</b> Justin O'Toole Lucey, Esquire Dabny Lynn, Esquire Address: 415 Mill St Mt. Pleasant, SC 29464 Phone: (843) 849-8400 Fax: (843) 849-8406 Email: <a href="mailto:jlucev@lucey-law.com">jlucev@lucey-law.com</a> Other: <a href="mailto:dlynn@lucey-law.com">dlynn@lucey-law.com</a>	<b>Defendant's Attorney:</b> C. Davi Dyer, Esquire, Bar No. 78178 Address: Kernodle Root & Coleman P.O. Box 13897 Charleston, SC 29422-3897 Phone: (843) 795-7800 Fax: (843) 795-3032 Email: <a href="mailto:ddyer@kernodlelaw.com">ddyer@kernodlelaw.com</a> Other:
<input checked="" type="checkbox"/> <b>MOTION HEARING REQUESTED</b> (attach written motion and complete SECTIONS I and III) <input type="checkbox"/> <b>FORM MOTION, NO HEARING REQUESTED</b> (complete SECTIONS II and III) <input type="checkbox"/> <b>PROPOSED ORDER/CONSENT ORDER</b> (complete SECTIONS II and III)	
<b>SECTION I: Hearing Information</b>	
Nature of Motion: Motion to Compel and Motion for Determination of Setoff Estimated Time Needed: 15 minutes <span style="float: right;">Court Reporter Needed: <input checked="" type="checkbox"/> YES/<input type="checkbox"/> NO</span>	
<b>SECTION II: Motion/Order Type</b>	
<input type="checkbox"/> Written motion attached <input type="checkbox"/> Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.	
_____ Signature of Attorney for Defendant	September 7, 2016 Date submitted
<b>SECTION III: Motion Fee</b>	
<input checked="" type="checkbox"/> <b>PAID – AMOUNT: \$ 25.00</b> <input type="checkbox"/> <b>EXEMPT:</b> (check reason)	
<input type="checkbox"/> Rule to Show Cause in Child or Spousal Support <input type="checkbox"/> Domestic Abuse or Abuse and Neglect <input type="checkbox"/> Indigent Status <input type="checkbox"/> State Agency v. Indigent Party <input type="checkbox"/> Sexually Violent Predator Act <input type="checkbox"/> Post-Conviction Relief <input type="checkbox"/> Motion for Stay in Bankruptcy <input type="checkbox"/> Motion for Publication <input type="checkbox"/> Motion for Execution (Rule 69, SCRPC) <input type="checkbox"/> Proposed order submitted at request of the court; or Reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: _____ <input type="checkbox"/> Other:	
<b>JUDGE'S SECTION</b>	
<input type="checkbox"/> Motion Fee to be paid upon filing of the attached order. <input type="checkbox"/> Other:	JUDGE CODE _____ Date:
<b>CLERK'S VERIFICATION</b>	
Collected by: _____ Date Filed: _____ <input type="checkbox"/> MOTION FEE COLLECTED: \$ _____ <input type="checkbox"/> CONTESTED – AMOUNT DUE: \$ _____	

SCCA 233 (11/2003)