EXHIBIT L

11/17/16 Builders FirstSource-Southeast Group, LLC's Memorandum in Support of its Motion to Compel Production of Settlement Agreements and Motion for Setoff

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November 17, 2016

The Honorable Julie J. Armstrong
Clerk of Court
Charleston County Courthouse
100 Broad Street, #106
Charleston, SC 29401

RE: One Belle Hall Property Owners Association Inc., et al. v. Builders FirstSource Southeast Group LLC, et al.
Civil Action No. 2012-CP-10-07594
Our File No. 00350/01800

Dear Ms. Armstrong:

Enclosed for filing in the above-referenced matter please find the original and one copy of a Memorandum in Support of Builders First's Motion for JNOV, New Trial, New Trial Absolute, Or, In The Alternative, For New Trial *Nisi Remittitur* and Memorandum in Support of Defendant's Motion to Compel Production of Settlement Agreement and Motion for Setoff. Please return a clocked-in copy of each to us in the envelope provided.

By copy of this letter, we are hereby serving counsel with a copy of this document.

Sincerely,

William C. Wood, Jr.

WCWJR:eh
Enclosures
cc: Justin Lucey, Esquire (via email on 11/17/16 and via hand delivery on 11/18/16)
Dabny Lynn, Esquire (via email on 11/17/16 and via hand delivery on 11/18/16)

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	)))	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT
One Bell Hall Property Owners Association Inc. and Marvin T. Meek and Frances E. Hill, individually, and on behalf of all others similarly situated, Plaintiffs, vs. Builders FirstSource Southeast Group LLC, et al., Defendant.	)	Civil Action No. 2012-CP-10-07594 **Memorandum in Support of Defendant's Motion to Compel Production of Settlement Agreements and Motion for Setoff**

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JULIE J. ARMSTRONG
CLERK OF COURT

Defendant Builders FirstSource Southeast Group LLC ("BFS") submits this memorandum in support of its Motion to Compel and Determination for Setoff. As set forth in the Motion and below, this Court should grant the motion and setoff the amounts received by Plaintiffs from settling co-defendants from the verdict rendered against BFS.

Factual Background

In the Third Amended Complaint, Plaintiffs sought recovery on a joint and several basis for the same injury against BFS and other specified co-defendants under strict liability and breach of express and implied warranty causes of action. On the strict liability claim, Plaintiffs sought recovery from BFS, BASF Corporation ("BASF"), TAMKO Building Products ("TAMKO"), and Raymond Building Supply Corporation d//b/a Energy Saving Products of Florida, Inc. a/k/a Energy Savings Products of Florida, a division of Raymond Building Supply Corp. ("ESP"), for the same injury for which the jury entered the verdict

against BFS, namely "repeated water intrusion into and damage to One Belle Hall and other building deficiencies." See Third Amended Complaint ¶ 127. Plaintiffs claimed the four defendants were jointly and severally "liable to Plaintiffs under the doctrine of strict liability" for this shared injury. See Third Amended Complaint ¶ 131.

Plaintiffs also sought recovery for the same injury from BFS and all co-defendants on a breach of express and implied warranties cause of action.[1] Plaintiffs' set forth the same injury against all defendants—"Defendants have breached their warranties by designing, constructing, and/or repairing One Belle Hall in a defective manner . . ." See Third Amended Complaint ¶ 117. Plaintiffs aggregated damages sought from all defendants, jointly and severally. See Third Amended Complaint ¶ 118.

Prior to trial, Plaintiffs settled the strict product liability and breach of warranty causes of action with each co-defendant. The amount of the settlement with each co-defendant is

[1] Plaintiffs' asserted their breach of warranty claim against BASF, TAMKO, ESP, Trammell Crow Residential Company, Trammell Crow Residential Carolina, TCR Construction, TCR Development, TCR Carolina Properties Inc., Belle Hall Direct 101, LP, TCR RLD Condominiums, Inc., TCR SE Construction, Inc., TCR SE Construction II, Inc., TCR Southeast, Inc., Tauer Consulting Company, Inc., Halter Properties, LLC, Halter Realty Group, LLC, Cline Design Associates, P.A, Gary D. Cline, GCI Consultants, LLC f/k/a Glazing Consultants, Inc., Stewart Engineering, Inc., ABG Caulking & Waterproofing of Morristown, Inc., Builders Services Group, Inc., individually, and d/b/a Gale Contractor Services, Inc., Budget Mechanical Plumbing, Inc., Century Fire Protection, LLC, Coastal Lumber and Framing, LLC, Advanced Building Products & Services, LLC, Dobson Brothers Exterminating Co., First Exterior, LLC, Flooring Services, Inc., General Heating & Air Conditioning Company of Greenville, Inc., Jimmy Warner, Warner Heating & Air, GWC Roofing, Inc., Southcoast Exteriors, Inc., IES Residential Inc. f/k/a Houston Stafford Electrical Contractors, LP, J. Correa Electrical Company, LLC, KMAC of the Carolinas, Inc., P&P Metal Sales Co., Inc., Pleasant Places, Inc., RS General Contracting, LLC f/k/a RS Custom Homes, LLC, Southern Specialties, Inc., Structural Contractors South, Inc., Superior Construction Services, Inc., VNS Corporation, individually, and d/b/a Wholesale Building Products, Billy Gray d/b/a United Builders, LLC, What Don't We Do.

unknown despite repeated requests that Plaintiffs disclose the amount of each settlement and the filing of a pending motion to compel production of the settlement agreements. BFS understands the settlement amounts taken together far exceed the judgment of $2,163,000.00 rendered by the jury against BFS on Plaintiffs' strict liability and breach of express and implied warranty causes of action at trial.

Legal Argument

BFS is entitled to a setoff as a matter of law of the amounts received by Plaintiffs from each of the settling co-defendants. Set-off is required by statute and by common law equitable principles.

I. S.C. Code Ann. §15-38-50 requires the Court to apply the settlements of co-defendants as a set-off against the verdict against BFS.

Section 15-38-50 requires setoff when a plaintiff settles with another tortfeasor in the action. It states:

> When a release or a covenant not to sue or not to enforce judgment is given in good faith to one of two or more persons liable in tort for the same injury or the same wrongful death:
>
> > (1) it does not discharge any of the other tortfeasors from liability for the injury or wrongful death unless its terms so provide, **but it reduces the claim against the others to the extent of any amount stipulated by the release or the covenant, or in the amount of the consideration paid for it, whichever is the greater**; and
> >
> > (2) it discharges the tortfeasor to whom it is given from all liability for contribution to any other tortfeasor.

Id. (emphasis added). A settlement by a joint tortfeasor "reduces the claim against the others to the extent of any amount stipulated by the release or the covenant." Smith v. Widener, 397 S.C. 468, 471, 724 S.E.2d 188, 190 (Ct. App. 2012) (applying S.C. Code Ann. § 15-38-

50(1) (2005)). Therefore, the court must reduce the amount of the verdict to account for any funds previously paid by a settling defendant, so long as the settlement funds were paid to compensate the same plaintiff on a claim for the same injury. Widener, 397 S.C. at 471-72, 724 S.E.2d at 190; Hawkins v. Pathology Assocs. of Greenville, P.A., 330 S.C. 92, 113, 498 S.E.2d 395, 406-07 (Ct.App.1998).

When the settlement is for the same claimed injury, as is the case in this matter, the non-settling defendant's right to a setoff arises by operation of law. Ellis v. Oliver, 335 S.C. 106, 112, 515 S.E.2d 268, 271–72 (Ct. App. 1999). Under this circumstance, "[s]ection 15–38–50 grants the court no discretion . . . in applying a set-off." Widener, 397 S.C. at 472, 724 S.E.2d at 190; Oliver, 335 S.C. at 113, 515 S.E.2d at 272; see also Vortex Sports & Entm't, Inc. v. Ware, 378 S.C. 197, 210, 662 S.E.2d 444, 451 (Ct. App. 2008) (holding that Section 15-38-50, which discharges tortfeasor to whom release is given from all liability for contribution to any other tortfeasor, grants the court no discretion in determining the equities involved in applying a set-off once a release has been executed in good faith between a plaintiff and one of several joint tortfeasors).

II. Set-off is required as a matter of equity to the extent it is not mandated by S.C. Code Ann. § 15-38-50.

Even if Section 15-38-50 did not require setoff, this Court should still grant the motion under its equitable power. A non-settling defendant is entitled to credit for the amount paid by another defendant who settles for the same cause of action. Welch v. Epstein, 342 S.C. 279, 312–13, 536 S.E.2d 408, 425 (Ct.App.2000). "The trial court's jurisdiction to set off one judgment against another is equitable in nature and should be exercised when necessary to provide justice between the parties." Id. at 313, 536 S.E.2d at 425. Allowing this credit

prevents an injured person from obtaining a double recovery for the damage he sustained, for it is "almost universally held that there can be only one satisfaction for an injury or wrong." Rutland v. S.C. Dept. of Transp., 400 S.C. 209, 216, 734 S.E.2d 142, 145 (2012).

III. Both the statutory requirement and common law equitable principles are designed to prevent double recovery by the Plaintiff for the same injury or wrong.

"[T]here can be only one satisfaction for an injury or wrong." Welch v. Epstein, 342 S.C. 279, 312, 536 S.E.2d 408, 425 (Ct. App. 2000); (internal quotation marks omitted); Collins Music Co., Inc. v. Smith, 332 S.C. 145, 148, 503 S.E.2d 481, 482 (Ct. App. 1998) (denying "double recovery (once from each defendant) for actual damages which are coextensive"); Inman v. Imperial Chrysler-Plymouth, Inc., 303 S.C. 10, 13, 397 S.E.2d 774, 776 (Ct. App. 1990) (per curiam) ("It is a fundamental rule of law in this state that there can be no double recovery for a single wrong."). "[T]he reason for allowing such a credit is to prevent an injured person from a second recovery of that part of the amount of damages sustained which has already been paid him. Or differently stated, it is almost universally held that there can be only one satisfaction for an injury or wrong." Truesdale v. South Carolina Highway Dept., 264 S.C. 221, 213 S.E.2d 740 (1975); see also Collins v. Bisson Moving & Storage, Inc., 332 S.C. 290, 304-05, 504 S.E.2d 347, 355 (Ct. App. 1998) ("'A well-settled general rule is that partial compensation paid by one tort-feasor may be shown by another tort-feasor in mitigation or reduction of damages, **for the reason that a party can have but one satisfaction of his damages.**'") (quoting 25 C.J.S. Damages § 98(2) (1966) (emphasis added)).

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Conclusion

Plaintiff will obtain an unlawful and inequitable double recovery unless this Court grants the setoff as required by statute and the common law. The Court should compel Plaintiffs to produce the settlement agreements as to every co-defendant and set-off the sum of such settlements against the verdict rendered against BFS.

Respectfully submitted,

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