

November 14 2022 8:30 AM

CONSTANCE R. WHITE  
COUNTY CLERK  
NO: 22-2-10104-6

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
PIERCE COUNTY

CORNERSTONE HEALTHCARE SERVICES,  
LLC, a Washington limited liability  
company; ALDERCREST HEALTH  
EDMONDS,  
LLC, a Washington limited liability  
company; BREMERTON HEALTH, LLC, a  
Washington limited liability company;  
CRESTWOOD CONVALESCENT-PORT  
ANGELES, LLC, a Washington limited  
liability company; FOREST RIDGE HEALTH-  
BREMERTON, LLC, a Washington limited  
liability company; SEQUIM HEALTH, LLC, a  
Washington limited liability company; FIR  
LANE HEALTH-SHELTON, LLC, a  
Washington limited liability company; and.

Plaintiffs,

v.

ACTRIV HEALTHCARE, INC., a Washington  
corporation, ACTRIV, INC., a Washington  
corporation, and DOES (1-10)

Defendant.

No.

FIRST AMENDED COMPLAINT FOR  
DAMAGES

1 COMES NOW the Plaintiffs, by and through their attorneys of record, and by  
2 way of claim allege, as follows:

3  
4 **I. PARTIES**

5 1.1. Plaintiff, Cornerstone Healthcare Services, LLC ("Cornerstone"), is a  
6 Washington Limited Liability Company, with a principal place of business in  
7 Gig Harbor, Washington (PierceCounty). Cornerstone provides essential  
8 services for the vulnerable community by adhering to high standards of  
9 service and providing the best available staff to nurse vulnerable and elderly  
10 clients that are under its care.

11 1.2. Plaintiff, Aldercrest Health Edmonds, LLC ("Alderwood Health"), is a  
12 Washington Limited Liability Company, with its principal place of business in  
13 Edmonds, Washington (Snohomish County).

14 1.3. Plaintiff, Bremerton Health, LLC ("Bremerton Health"), is a Washington  
15 Limited Liability Company, with its principal place of business in Bremerton,  
16 Washington (Kitsap County).

17 1.4. Plaintiff, Crestwood Convalescent-Port Angeles, LLC ("Crestwood"), is a  
18 Washington Limited Liability Company, with its principal place of business in  
19 Port Angeles, Washington (Clallam County).

20 1.5. Plaintiff, Forest Ridge Health-Bremerton, LLC ("Forest Ridge"), is a Washington  
21 Limited Liability Company, with its principal place of business in Bremerton,  
22 Washington (Kitsap County).

23 1.6. Plaintiff, Sequim Health, LLC ("Sequim Health"), is a Washington Limited  
24 Liability Company, with its principal place of business in Sequim, Washington  
25 (Clallam County).

- 1 1.7. Plaintiff, Fir Lane Health-Shelton, LLC (“Fir Lane”), is a Washington Limited  
2 Liability Company, with its principal place of business in Shelton, Washington  
3 (Mason County)
- 4 1.8. Together the Plaintiffs identified in (jointly: “Facility Plaintiffs”) are  
5 Washington limited liability companies managed by Cornerstone, which  
6 operate nursing homes and providing essential services for the vulnerable  
7 and elderly community in the state of Washington.
- 8 1.9. Defendant, Actriv Healthcare Inc. (“Actriv Healthcare”) is a Washington  
9 Corporation, with its principal place of business in Tacoma, Washington  
10 (Pierce County). Actriv Healthcare is a healthcare staffing agency that  
11 provides contracted healthcare providers to healthcare facilities in  
12 Washington and other States including Oregon, California, Idaho, Arizona,  
13 and Texas. Actriv Healthcare was originally formed under the name Action  
14 Healthcare Staffing, LLC, which was formed as a Washington Limited Liability  
15 Company on 05-02-2017; this business entity was converted to Actriv  
16 Healthcare, Inc. on 12-15-2020. The Washington Secretary of State identifies  
17 Allan Njoroge as the Governing Person of Actriv Healthcare.
- 18 1.10. Defendant, Actriv, Inc. (“Actriv”) is a Washington Corporation, with its  
19 principal place of business in Tacoma, Washington (Pierce County). Actriv is  
20 a healthcare staffing agency that provides contracted healthcare providers  
21 to healthcare facilities in Washington and other and other States including  
22 Oregon, California, Idaho, Arizona, and Texas. Actriv was formed on 04-04-  
23 2019. The Washington Secretary of State identifies Allan Njoroge as the  
24 Governing Person of Actriv.
- 25  
26  
27

1 1.11. Actriv Healthcare and Actriv have common ownership and management and  
2 operate out of the same office location in Tacoma, Washington (Pierce  
3 County).

4 1.12. In early 2021 Actriv made a number of public announcements related to a  
5 purported merger of Actriv, Inc. and Action Healthcare Staffing, LLC, and  
6 which further publicized that the merged entities would be operating under  
7 a new name "Actriv Healthcare, Inc." At the time of these public  
8 announcements, Action Healthcare Staffing, LLC had already been converted  
9 to Actriv Healthcare, Inc. in December of 2020. Based on records available  
10 from the Washington Secretary of State, no Articles of Merger have ever been  
11 filed by any of these companies; and both companies remain separate  
12 business entities, which operate out of the same office location.

13 1.13. Around the same time that Actriv, Inc was formed, Action Healthcare Staffing,  
14 LLC operated out of the same office location in Tacoma, Washington as a  
15 different set of business entities, namely A-Plus Healthcare, LLC and A-Plus  
16 Healthcare Staffing, LLC, among multiple other similarly named companies  
17 ("A-Plus Companies"). The A-Plus Companies were owned and controlled by  
18 Sabryna D. Njoroge (AKA Sabryna D. Klug, AKA Sabryna Miller, AKA Sabryna  
19 Klug-Whittington, AKA Sabryna Klua, AKA Sabryna Kwa), who is identified in  
20 these companies as holding different roles. On information and belief,  
21 between the beginning of 2019 and the end 2020, the A-Plus Companies  
22 jointly operated with Action Healthcare Staffing, LLC out of the same office  
23 location, and shared the same staff and resources. The A-Plus Companies  
24 were allowed to be Administratively Dissolved, but no winding up of the A-  
25 Plus Companies was ever performed. On information and belief, the assets,  
26 operations, and some staff of the A-Plus Companies have been subsumed by

1 Action Healthcare Staffing, LLC (now Actriv Healthcare, Inc.), which is a  
2 successor in interest to the A-Plus Companies.

3 1.14. Over the last five years, both Allan Njoroge and Sabryna Njoroge have formed  
4 numerous business entities, with the same, similar, or confusingly similar  
5 sounding names to "Actriv"; some of which the Washington Secretary of State  
6 indicate are or were owned by either or both of them. Most of these  
7 businesses share the same registered agents and use the same office  
8 location as the Actriv Companies and the A-Plus Companies.

9 1.15. On information and belief, Sabryna Njoroge was previously convicted of  
10 theft, and served time for fraud, forgery, and unlawful issuance of bank  
11 checks in the health care industry while working as Certified Nursing  
12 Assistant ("CNA") in Idaho. As a result of these health care industry criminal  
13 convictions, Sabryna Njoroge was prohibited from working in the health care  
14 industry and placed on the US Department of Health and Human Services  
15 Debarment/Exclusion List, including the Federal System for Award  
16 Management Excluded Parties List, which on information and belief  
17 continues to the present.

18 1.16. Sabryna Njoroge has remained an executive officer with Actriv Healthcare,  
19 Inc. and other companies affiliated with Actriv Healthcare following the  
20 Administrative Dissolution of the A-Plus Companies.

21 1.17. DOES 1-10, Inclusive.

## 22 II. JURISDICTION AND VENUE

23 2.1. Jurisdiction. The Defendants' principal office addresses are within the  
24 jurisdiction of this Court. The Defendants are registered to do business in  
25 Washington State and do business in Washington State. Thus, the  
26

1 Defendants have obtained the benefits of the laws of Washington as well as  
2 Washington based businesses that obtained their services.

3 2.2. Venue. Venue is proper in Pierce County because the Defendants' offices  
4 are located within Pierce County.

5 **III. FACTS OF THE CASE**

6 3.1. Plaintiffs, Aldercrest, Bremerton Health, Forest Ridge, Crestwood, and  
7 Sequim Health entered into a Facilities Service Agreement for the provision  
8 of temporary medical staffing services with Actriv Healthcare, Inc. on or  
9 around April 28, 2021. Certain rate sheets were attached to the Agreement  
10 and incorporated by reference.

11 3.2. Plaintiff, Fir Lane entered into a Facilities Service Agreement for the provision  
12 of temporary medical staffing services with Actriv, Inc. on or around July 13,  
13 2020. Certain rate sheets were attached to the Agreement and incorporated  
14 by reference.

15 3.3. Following the execution of the respective agreements, the Defendants  
16 provided certain services to the Plaintiffs, issued invoices for certain services,  
17 and the Plaintiffs paid certain invoices that had been issued by the  
18 Defendants.

19 3.4. At no time did Actriv Healthcare, Inc. reveal to the Plaintiffs that it was a  
20 successor in interest to the A-Plus Healthcare Companies. Nor did Actriv, Inc.  
21 disclose that it was jointly operating with the A-Plus Healthcare Companies  
22 at the time that the respective Plaintiffs entered into agreements with Actriv  
23 Healthcare, Inc. and Actriv, Inc. respectively. At no time have the Actriv  
24 Companies made any public statement disclosing that the announced  
25 merger of Actriv, Inc. and Action Healthcare, LLC was not consummated.  
26

- 1 3.5. The Agreements between the various parties were entered into during the  
2 height of the COVID-19 Pandemic when there were severe shortages of  
3 medical staffing in the Puget Sound Region and around the United States.
- 4 3.6. Part of the services provided by the Actriv Companies were "Travel Nurses"  
5 (which included both nurses as well as other temporary medical staff), which  
6 would be contracted to medical facilities like the Plaintiffs.
- 7 3.7. As part of the service delivery of temporary medical staffing, the Actriv  
8 Companies use an integrated software application referred to as "CSS" for  
9 both scheduling temporary staff and invoicing among other functionality that  
10 has been developed. On information and belief, the Actriv Companies  
11 developed customized application features for CSS that were used for  
12 calculating rates for COVID-19 rates in connection with other rates and  
13 charges that were ultimately billed to clients.
- 14 3.8. At the time that Plaintiff, Fir Lane entered into its agreement, this Plaintiff was  
15 still part of a Chapter 11 Bankruptcy Proceeding, at the time that the  
16 remaining Plaintiffs entered into their agreement, the Cornerstone  
17 Companies had just emerged from bankruptcy. The Bankruptcy Court had  
18 confirmed the Plan of Reorganization on December 6, 2020 (for Cornerstone  
19 18 Operations, LLC, and affiliated Companies); and on May 11, 2021, the  
20 Bankruptcy Court ordered that the effective date of the Plan of  
21 Reorganization was to be May 7, 2021. As part of the Plan of Reorganization,  
22 a new management team was brought in to take over the operations of  
23 various Cornerstone Facilities that were part of the Plan of Reorganization.
- 24 3.9. After the new management team took over supervision of the various  
25 Cornerstone Facilities, the management team began reviewing the invoices  
26 and other records of various vendors, including the invoices of the

1 Defendants. In this process, numerous discrepancies and other billing  
2 irregularities and overcharges were discovered, as well as other indicators of  
3 a pattern of overcharging and inflation of invoices.

4 3.10. These overcharges appeared to be a systematic overcharging of the  
5 Defendants' customers through the charging or overcharging of "traveler"  
6 rates when such rates were either not approved or applicable; the charging  
7 of overtime rates where such rates were either inapplicable or not approved,  
8 and inconsistent with the language of the agreements; the charging and  
9 overcharging of milage reimbursements, where such reimbursements were  
10 not supported or improperly charged, and the charging of "COVID-19" rates,  
11 which were either inapplicable, and/or calculated in a way that was both  
12 inconsistent with the language of the contract as well as calculated in a  
13 particular way that the resulting rates were inflated. On information and  
14 belief, these questionable business practices by the Defendants appear to be  
15 part of larger pattern of overbilling and price gouging of convalescent  
16 facilities during the COVID-19 Pandemic. On information and belief, the  
17 Defendants' conduct resulted in enormous profits during the COVID-19  
18 pandemic, while other businesses, including convalescent facilities and their  
19 patients struggled.

20 3.11. Actriv Healthcare, Inc. brought an arbitration action against certain Plaintiff  
21 companies for invoiced that were unpaid by certain Plaintiffs; but this action  
22 is being brought against Actriv Healthcare, Inc. and Actriv, Inc. for the return  
23 of monies that have been already paid to the Defendants as part of their  
24 scheme.



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**IV. FIRST CAUSE OF ACTION – BREACH OF CONTRACT**

- 4.1. The Plaintiffs reallege and incorporate by reference all preceding paragraphs, including each and every allegation that is included within them.
- 4.2. Between the Plaintiffs and the Defendants exist or existed certain agreements that set the commercial terms of the Defendant’s service.
- 4.3. The Defendants materially breached these contracts with the Plaintiffs by billing the Defendants for time the Defendants’ employee providers did not perform and/or rates that are not supported by the terms of the agreement, and/or reimbursements that Defendants were not entitled to and then having the Plaintiffs pay said invoices.
- 4.4. As a direct and proximate cause of the Defendants’ respective breaches of contract, the Plaintiffs have suffered injuries and damages.

**V. SECOND CAUSE OF ACTION – VIOLATION OF THE WASHINGTON CONSUMER PROTECTION ACT (CH 19.86 RCW)**

- 5.1. The Plaintiffs reallege and incorporate by reference all preceding paragraphs, including each and every allegation that is included within them.
- 5.2. The Defendants violated the Washington Consumer Protection Act (Ch. 19.86 RCW) by engaging in a material unfair or deceptive acts or practices, that occurred in trade and commerce, which affects the public interest. Such conduct has injured the Plaintiffs in their business. Such unfair and deceptive acts or practices occurred during the COVID-19 Pandemic, at a time of emergency when convalescent facilities and the patients they served were particularly vulnerable to such practices.
- 5.3. As a direct and proximate cause of the Defendant’s violation of the Washington Consumer Protection Act, the Plaintiffs have suffered injuries and damages.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**VI. THIRD CAUSE OF ACTION – MISREPRESENTATION**

- 6.1. The Plaintiffs reallege and incorporate by reference all preceding paragraphs, including each and every allegation that is included within them.
- 6.2. The Defendants made certain misrepresentations to the Plaintiffs and the public in general with regard to the businesses with whom the Plaintiffs were contracting. In addition, certain misrepresentations and were made in the numerous line items that were included in the numerous invoices issued to the Plaintiffs and subsequently transmitted to the Plaintiffs by use of electronic mail and by the US Mail System. Multiple representations made by the Defendants to the Plaintiffs were false, and Defendants knew that such representations were false or that such statements were made recklessly without knowledge of the truth. That such misrepresentations were made with the intention that the Plaintiffs rely on such misrepresentations; and the Plaintiffs did in fact rely on such misrepresentations.
- 6.3. As a direct and proximate cause of the Defendant’s misrepresentation, the Plaintiff have suffered injuries and damages.

**VII. FOURTH CAUSE OF ACTION – CONVERSION**

- 7.1. The Plaintiffs reallege and incorporate by reference all preceding paragraphs, including each and every allegation that is included within them.
- 7.2. The Defendants engaged in conversion, by, including but not limited to, billing the Plaintiffs for work time that did not occur and by adding additional costs to its services that was not agreed upon, which the Plaintiffs paid
- 7.3. As a direct and proximate cause of the Defendant’s conversion, the Plaintiffs and Class have suffered injuries and damages.

**VIII.**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**IX. PLAINTIFFS' DAMAGES**

9.1. To the degree not already pleaded above, as a direct and proximate cause of the Defendants conduct described above, the Plaintiffs have suffered and continue to suffer damages, in amounts to be determined at trial.

**X. PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs, pray for judgment against the Defendant as follows:

1. Awarding the Plaintiffs damages in an amount to be proven at trial;
2. Awarding the Plaintiffs reasonable attorney's fees and costs available under law; and awarding the Plaintiffs any and all applicable interest on the judgment, including pre-judgement interest; and
3. Awarding the Plaintiffs such other and further relief as the Court deems just and proper under the circumstances of this case, including but not limited to declaratory and injunctive relief.
4. The Plaintiffs reserve the right to request an order allowing it to amend this Counterclaim based upon information gained during the course of litigation as a result of the discovery process, to conform to the evidence adduced at trial or as may be necessary to serve the ends of justice.

/////  
/////  
/////  
/////

1 //

2 DATED this \_\_November 11\_\_, 2022.

3

POSSINGER LAW GROUP, PLLC

4

5



6

---

Jeffrey Possinger

7

WSBA #30854

8

20250 144<sup>th</sup> Avenue NE, Suite 205

9

Woodinville, Washington 98072

10

(t) 206-512-8030

11

(f) 206-569-4792

12

(e) jeffrey.possinger@possingerlaw.com

13

Attorney for Plaintiffs

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28