UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

SANDRA JOHNSON, c/o Stephen Hornbuckle 1408 140th Pl NE Bellevue, WA 98007, Plaintiff, v. CENTERS FOR MEDICARE & MEDICAID SERVICES, 7500 Security Boulevard, Baltimore, MD 21244, Defendant.	NO.: 2:18-CV-590 COMPLAINT FOR INJUNCTIVE RELIEF

COMPLAINT FOR INJUNCTIVE RELIEF

1. This is an action under the Freedom of Information Act, 5 U.S.C. § 552, to order the production of agency records, concerning documents related to a complaint investigation dated July 7, 2017 of the nursing home Richmond Beach Rehab, which Defendant has improperly withheld from Plaintiff.

2. Defendant may be served under Federal Rule of Civil Procedure 4(i)(1),(2) by delivering a copy of the summons and this complaint to Annette L. Hayes, United States

THE HORNBUCKLE FIRM
1408 140th Pl NE Suite 250
Bellevue, WA 98007
Tel: (425) 679-0742

attorney for the Western District of Washington where this action has been brought; and by sending a copy of the summons and this complaint by certified mail to the Centers for Medicare and Medicaid services at the Office of the General Counsel for the U.S. Department of Health and Human Services at 200 Independence Ave., S.W., Washington, D.C. 20201.

3. This court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B).

4. Plaintiff, Sandra Johnson, is the subject of the Complaint and has requested the records which Defendant is now withholding by and through her attorney Stephen Hornbuckle. Plaintiff has requested this information for use in a civil lawsuit and prompt release of the information is essential to preparing the lawsuit for trial.

5. Defendant Centers for Medicare & Medicaid Services is an agency of the United States and has possession of the documents that Plaintiff seeks.

6. By letter dated March 2, 2018, Plaintiff requested access to the following documents related to a complaint investigation concluded on July 7, 2017 of the Richmond Beach Rehab facility: surveyor notes, investigation findings, investigation working papers, reports, SOD/POC, recommendations, and all other records gathered or created during the course of a survey concluded on July 7, 2017. A copy of this letter is attached as **Exhibit 1**.

7. Plaintiff received a response from Defendant on March 21, 2018 notifying her that her request would require an additional processing time of 10 business days but has received no further correspondence from Defendant since that date. No records have been provided pursuant to Plaintiff's request.

8. Plaintiff has a right of access to the requested information under 5 U.S.C.

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§ 552(a)(3), and there is no legal basis for Defendant's denial of such access.

WHEREFORE, Plaintiff requests this Court:

1. Order Defendant to provide access to the requested documents;

2. Expedite this proceeding as provided for in 28 U.S.C. § 1657;

3. Award Plaintiff costs and reasonable attorneys fees in this action, as provided in 5 U.S.C. § 552(a)(4)(E); and

4. Grant such other and further relief as it may deem just and proper.

DATED this 20th day of April, 2018

THE HORNBUCKLE FIRM

By: _____

Stephen Hornbuckle, WSBA #39065
1408 140th Pl NE
Bellevue, WA 98007
Phone: (425) 679-0742/ Fax: (425) 679-0003
ATTORNEY FOR PLAINTIFF

Exhibit 1

STEPHEN HORNBUCKLE
ATTORNEY AT LAW
1408 -140th Place N.E., Suite 250
Bellevue, WA 98007

TELEPHONE (425) 679-0742 FAX: (425) 679-0002

FAX TRANSMITTAL COVER SHEET

DATE: March 2, 2018

FROM: Stephen Hornbuckle

TO: Debbie Snyder
CMS, Seattle Regional Office
701 5th Avenue, Suite 1600
Seattle, WA 98104

FAX: (206) 615-2325

RE: **Sandy Johnson v. Avamere Group LLC d/b/a/ Richmond Beach Rehab; Avamere Health Services LLC d/b/a/ Richmond Beach Rehab; Avamere Skilled Advisors, LLC d/b/a/ Richmond Beach Rehab; ARISO LLC d/b/a Richmond Beach Rehab; ARI Operations, LLC d/b/a Richmond Beach Rehab; Richmond Beach Rehab LLC, and Bonnie Bristow** /King County Superior Court Cause No.: 17-2-1200-2 SEA

MESSAGE: See attached letter.

TOTAL PAGES TRANSMITTED, INCLUDING COVER SHEET: _____
If total number of pages are not received, please call Allyson at (425) 679-0742.

THE HORNBUCKLE FIRM
ATTORNEYS AT LAW
1408 - 140TH PLACE N.E., SUITE 250
BELLEVUE, WASHINGTON 98007

THOMAS S. HORNBUCKLE

STEPHEN HORNBUCKLE

TELEPHONE (425) 679-0742 FAX (425) 679-0002

March 2, 2018

CMS FOIA Officer
Centers for Medicare & Medicaid Services
Mailstop N2-20-16
7500 Security Boulevard
Baltimore, MD 21244

Via Priority Mail

Debbie Snyder CMS, Seattle Regional Office 701 5th Avenue, Suite 1600 Seattle, WA 98104	Via Fax: (206) 615-2325

RE: **Sandy Johnson v. Avamere Group LLC d/b/a/ Richmond Beach Rehab; Avamere Health Services LLC d/b/a/ Richmond Beach Rehab; Avamere Skilled Advisors, LLC d/b/a/ Richmond Beach Rehab; ARISO LLC d/b/a Richmond Beach Rehab; ARI Operations, LLC d/b/a Richmond Beach Rehab; Richmond Beach Rehab LLC, and Bonnie Bristow** /King County Superior Court Cause No.: 17-2-1200-2 SEA

To Whom It May Concern:

Under the Freedom of Information Act, 5 U.S.C. subsection 552, I am requesting access to an investigation into the care and treatment of Sandra Ann Johnson. This survey was concluded on July 7, 2017, at Richmond Beach Rehab, by Ann Lee-Hunter, BA, Theresa McCoy, RN, Connie Phillips, RN, Amy Umberger, MSW, LICSW, Nancy Berger, RN, BSN, and Joni Roman, RN Complaint Investigators. I have enclosed a copy of the first two pages of the survey.

Please provide copies of surveyor notes, investigation findings, investigation working papers, reports, SOD/POC, recommendations, and all other records gathered or created during the course of a survey concluded on July 7, 2017 , at Richmond Beach Rehab, by Ann Lee-Hunter, BA, Theresa McCoy, RN, Connie Phillips, RN, Amy Umberger, MSW, LICSW, Nancy Berger, RN, BSN, and Joni Roman, RN Complaint Investigators.

In order to help you determine my status for the purpose of assessing fees, you should know that I am affiliated with a private business and am seeking information for use in the company's business.

I am willing to pay fees for this request up to a maximum of $500. If you estimate that the fees will exceed this limit, please inform me.

I request that the information I seek be provided in electronic format, and I would like to

receive it on a personal computer disk.

Please provide copies of the requested documents that do not redact Ms. Johnson's name. I have an authorization from Ms. Johnson allowing me to obtain all medical information relating to the her treatment and injury at Richmond Beach Rehab. A copy of this authorization is attached.

If you have any questions about handling this request, you may telephone me at (425) 679-0742.

Sincerely,

Stephen Hornbuckle

SH/nk
Enclosure

PRINTED: 09/14/2017
FORM APPROVED
OMB NO. 0938-0391

DEPARTMENT OF HEALTH AND HUMAN SERVICES
CENTERS FOR MEDICARE & MEDICAID SERVICES

STATEMENT OF DEFIC ENCIES AND PLAN OF CORRECTION	(X1) PROVIDER/SUPPLIER/CLIA IDENT FICATION NUMBER:	(X2) MULT PLE CONSTRUCTION	(X3) DATE SURVEY COMPLETED
	505488	A. BUILDING _____ B. WING _____	C 07/07/2017

NAME OF PROVIDER OR SUPPLIER	STREET ADDRESS, CITY, STATE, ZIP CODE
RICHMOND BEACH REHAB	19235 - 15TH AVENUE NORTHWEST SEATTLE, WA 98177

(X4) ID PREFIX TAG	SUMMARY STATEMENT OF DEFIC ENCIES (EACH DEFIC ENCY MUST BE PRECEDED BY FULL REGULATORY OR LSC IDENT FY NG INFORMATION)	D PREFIX TAG	PROVIDER'S PLAN OF CORRECTION (EACH CORRECTIVE ACTION SHOULD BE CROSS-REFERENCED TO THE APPROPRIATE DEFICIENCY)	(X5) COMPLETION DATE
F 000	INITIAL COMMENTS Citation Text for Tag 0000, Regulation FF09 This report is the result of an unannounced Quality Indicator Survey conducted at Richmond Beach Rehab on 06/21/2017, 06/22/17, 06/23/17, 06/26/17, 06/27/17, 06/28/17, 06/29/17, 06/30/17, 07/06/17 and 07/07/17. The survey included data collection on 06/28/17 from 4:30 AM to 8:00 AM. A sample of 42 residents was selected from a census of 127. The sample included 30 current residents, the records of 10 former and/or discharged residents. The following complaints were investigated as part of this survey: 3354761 3353728 3355243 3358384 3353735 The survey was conducted by: Ann Lee-Hunter, BA Theresa McCoy, RN Connie Phillips, RN Amy Umberger, MSW, LICSW Nancy Berger, RN, BSN Joni Roman, RN The survey team is from: Department of Social and Health Services Aging and Disability Services Aging and Long-Term Support Administration 3906 172nd St NE, Suite 100 Arlington, WA 98223 Telephone: (360) 651-6850	F 000		

LABORATORY D RECTOR'S OR PROV DER/SUPPLIER REPRESENTATIVE'S SIGNATURE | TITLE | (X6) DATE

Electronically Signed | 07/30/2017

Any deficiency statement ending with an asterisk (*) denotes a deficiency which the institution may be excused from correcting providing it is determined that other safeguards provide sufficient protection to the patients. (See instructions.) Except for nursing homes, the findings stated above are disclosable 90 days following the date of survey whether or not a plan of correction is provided. For nursing homes, the above findings and plans of correction are disclosable 14 days following the date these documents are made available to the facility. If deficiencies are cited, an approved plan of correction is requisite to continued program participation.

DEPARTMENT OF HEALTH AND HUMAN SERVICES
CENTERS FOR MEDICARE & MEDICAID SERVICES

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F 000	Continued From page 1 FAX: (360) 651-6940	F 000		
F 176 SS=E	Residential Care Services Date 483.10(c)(7) RESIDENT SELF-ADMINISTER DRUGS IF DEEMED SAFE (c)(7) The right to self-administer medications if the interdisciplinary team, as defined by §483.21(b)(2)(ii), has determined that this practice is clinically appropriate. This REQUIREMENT is not met as evidenced by: Based on observation, interview and record review the facility failed to ensure 5 of 5 sample residents (42,79, 230, 4, 147) observed with medications at bedside, was assessed for safety of medications at bedside, including self-administration, storage and monitoring. This failure placed the residents at risk for adverse effects from medication interactions and medical complications. Findings include: RESIDENT 42 On 06/22/17 and 06/23/17 a bottle of [redacted] (eye lubricant) eye drops was observed unsecured on the resident's nightstand. In an interview and observation on 06/26/17 at 9:19 AM the resident was sitting in her wheelchair at the bedside, the eye drop bottle was within her reach on top of the bed. She said she used the eye drops a lot, anytime her eyes felt dry.	F 176	F 176 Resident□s #4, 42, 79, 147 and 230 have been evaluated for self-medication administration. Resident assessments and care plans have been updated as indicated. Physicians have been updated and orders obtained as indicated. Residents and/or responsible party have been updated as indicated. Other residents have been evaluated for self-medication administration as indicated. Resident assessments and care plans have been updated as indicated. Physicians have been updated and orders obtained as indicated. Residents and/or responsible party have been updated as indicated. The self-medication administration program has been evaluated. LNs (Licensed Nurses) have been educated	8/7/17

OMB 0938 - 0930

Medicare Authorization To Disclose Personal Health Information

Use this form to ask Medicare to give out (disclose) your personal health information.

Sandra Ann Johnson _____ [redacted] 45
1. Print Your Name / Your Medicare Number / of Birth

2. **Check one or more boxes to tell Medicare the specific personal health information you want disclosed. Medicare will only disclose the personal health information you check below.**

☑ Information about a medical service or medical services you received. Fill in A, B, and/or C below:

A. One medical service on this date: _____
From this doctor or supplier: _____

B. All medical services on the following date(s): 1/1/16 to present

C. All medical services from these doctor(s) or supplier(s): _____

☐ Information about your Medicare eligibility

☐ Information on your other health coverage

☐ Information on your deductible for the year(s) of: _____

☐ Copy of your Medicare Summary Notice for

Date of Medical Service	Doctor or Supplier	Hospital or Facility
_____	_____	_____
_____	_____	_____

☐ Other personal health information:
_____

3. **Check only one for how long Medicare can use this authorization to disclose your personal health information** (subject to applicable law—for example, your State may limit how long Medicare may give out your personal health information):

☐ Disclose my personal health information this one time only.

☑ Start disclosing my personal health information on this date: 2/15/18
Stop disclosing my personal health information on this date: 2/15/19

☐ Disclose my personal health information for the duration of an event (for example, while you are enrolled in a Medicare health plan or while you are in a hospital).

What is the event: _____

4. Fill in the reason for the disclosure (you may write "at my request"):
at my request

5. Fill in the name and address of the person(s) or organization(s) to whom you want Medicare to disclose your personal health information:
Stephen Hornbuckle and The Hornbuckle Firm

6.

I authorize Medicare to disclose my personal health information listed above to the person(s) or organization(s) I have named on this form. I understand that my personal health information may be re-disclosed by the person(s) or organization(s) and may no longer be protected by law.

Sandra A Johnson — Sign Your Name
206 619 1052 — Your Telephone Number
2/15/18 — Date

☐ Check here if you are signing as a personal representative. Please attach the appropriate documentation (for example, Power of Attorney).

7. Send your completed, signed authorization to:

8. Note:

You have the right to take back ("revoke") your authorization at any time, in writing, except to the extent that Medicare has already acted based on your permission. If you would like to revoke your authorization, send a written request to the address shown above.

Your refusal to authorize this disclosure of your personal health information will have no effect on your enrollment, eligibility for benefits, or the amount Medicare pays for the health services you receive.

If you need help with this form, call 1-800-MEDICARE (1-800-633-4227).

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0938-0930. The time required to complete this information collection is estimated to average 15 minutes per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. If you have any comments concerning the accuracy of the time estimate(s) or suggestions for improving this form, please write to CMS, Attn: Reports Clearance Officer, 7500 Security Boulevard, Baltimore, Maryland 21224-1850.

Form CMS 10106 (11/04)