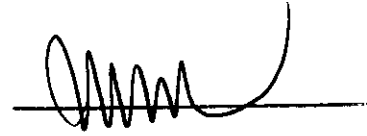


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**FILED** **ANC**  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF RIVERSIDE

APR - 7 2009



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14 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
15 FOR THE COUNTY OF RIVERSIDE - RIVERSIDE BRANCH

16 **PATRICIA BEHR**, an individual, )  
17 )  
18 Plaintiff, )  
19 )  
20 vs. )  
21 )  
22 **THOMAS REDMOND**, an )  
23 individual, and DOES 1 - 30, )  
24 Inclusive, )  
25 )  
26 Defendants. )

Case No. INC 052881

[Honorable William E. Burby,  
Department HA1]

**REPLY TO OPPOSITION TO  
PLAINTIFF'S SUPPLEMENTAL  
MOTION FOR NEW TRIAL  
(AND OPPOSITION TO MOTION  
TO STRIKE)**

Judgment Entered: February 11, 2009  
Date and time of Hearing: April 17, 2009  
8:30 A.M.

Place of Hearing: Department HA1  
Hawthorne Facility

27 **I. INTRODUCTION**

28 Within 48 hours of the verdict being rendered in this case, plaintiff's law firm posted notice  
29 of its victory on its website. Evidently the notice didn't draw sufficient inquiry, because on February  
30 24, 2009, the firm crowed on Newswire Today! (Frisbee Aff. EXH. 1):

In a landmark verdict, a Riverside County Superior Court jury awarded over \$4 million in  
compensatory damages and \$2.75 million in punitive damages to a 56-year-old woman  
infected with genital herpes it was announced by Slovak, Baron & Empey LLP, Attorneys  
at Law. Genital herpes is an incurable sexually transmitted disease. The case is believed to

1 be the largest jury verdict ever awarded in a case of this nature.<sup>1</sup>

2 Surely the firm must have gotten Patricia Behr's permission for the press release, and surely  
3 she and her lawyers must have known that her name would become public. Exceedingly strange  
4 conduct by a woman who claimed to be mortified by standing in a pharmacy line to pick up Valtrex.  
5 In any event, within hours the press release caused national notoriety. It also caused concomitant  
6 embarrassment to Thomas Redmond, which was likely its primary purpose. But in rich irony it also  
7 caused witness Ronald Ramsdell, at great personal risk and discomfit, to come forward to address  
8 the injustice worked by this verdict.

9 Ramsdell knows the difference between right and wrong, and he also knew that coming  
10 forward would cause anyone who reads or watches such things to know he has herpes and was  
11 arrested. Sure enough, Ramsdell drew the following public opprobrium from plaintiff's counsel:<sup>2</sup>

12 Behr's attorney, **Shaun M. Murphy**, said Ramsdell's 'affidavit is completely false. There  
13 is an arrest report still in the Richfield Police Department files documenting that he was  
14 arrested in May of 1992 for assaulting her.<sup>3</sup> \* \* \* This is a vengeful man who sees an  
15 opportunity to get back at her.'

16 And as night follows day, Behr filed a pile of Affidavits from friends and family attempting  
17 to demonstrate what a bad guy is Ramsdell. As pointed out in the Objections to the Affidavits, filed  
18 herewith, the great majority of their content is objectionable and would be inadmissible at any trial.  
19 And Ramsdell's reply Affidavit, also filed herewith, is just as worthy of belief as the calumny filed  
20 by Behr. None of Behr's affidavits address the core issue - whether Behr gave Ramsdell herpes long  
21 before she ever met Tom Reldmond. As the test results attached to Ramsdell's Affidavit show, and  
22 addressing Behr's objection that he wasn't medically diagnosed, now he *has* been medically

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23 <sup>1</sup>It certainly is, by many millions. As is pointed out in the companion Reply to Opposition to  
24 Motion For New Trial ( P.2, Appendix ), its amount is evidence not of justice but of passion and  
25 prejudice.

26 <sup>2</sup>Minneapolis Star Tribune, gossip columnist "C.J." on 3/17/09,  
[www.startribune.com/lifestyle/41343532.html?page=2&c=y](http://www.startribune.com/lifestyle/41343532.html?page=2&c=y)

<sup>3</sup>As is shown *infra*, the charges were dismissed in large part because of statements from  
neighbors disturbed by the lifestyle of Behr and her children.

1 diagnosed and he has HSV II.

2 Anyway, but for Behr/Murphy's avidity for publicity, Ramsdell's friend and Ramsdell would  
3 never have heard about the verdict. Behr now claims that Ramsdell is unworthy of belief because  
4 he is a jilted ex-lover. Isn't that exactly what Patricia Behr is?

5 **II. ARGUMENT**

*Bob - check this out -*

6 A. Defendant's Supplemental Motion For New Trial Was Timely Filed and Served.

7 Plaintiff argues in its Opposition and in a Motion To Strike that the court does not  
8 have jurisdiction to consider the Ramsdell motion. Ever a stickler for the rules, her counsel cites in  
9 exquisite detail the time requirements of Rule 659 and various cases discussing it. However, like  
10 Behr's case generally, the discussion is based on untruths or inaccuracies. At page 3 of her  
11 Memorandum (and in her Motion To Strike) plaintiff states that, "The Court in this case entered  
12 judgment on February 11, 2009, and the clerk mailed notice of entry of judgment the same day." The  
13 statement is entirely untrue.

14 As is shown by Frisbee Affidavit EXHIBIT A, the court website, there is no entry whatever  
15 for February 11, 2009. On 2/17/2009 the docket reads "JUDGMENT ON VERDICT FILED."  
16 There is no entry anywhere on any date that the clerk mailed any notice of entry of judgment, and  
17 Redmond's counsel never got any mailing from the clerk. Moreover, Rule 664 imposes a duty on  
18 the clerk to mail notice to mail notice of entry of judgment only in limited instances - in marriage  
19 cases, when the prevailing party is not represented by counsel, or when the court so orders. Aside  
20 from no record that the clerk actually mailed any notice, there is no evidence in the docket that there  
21 is an order of the court to do so. And any notice mailed by the clerk without such an order would  
22 be ineffective. See, e.g., *Van Buerden Ins. Services, Inc. v. Customized Worldwide Weather Ins.*  
23 *Agency, Inc.* (1997) 15 Cal.4th 51, 62-65.

24 Plaintiff's counsel did serve a document (Frisbee Affidavit EXHIBIT B) entitled Notice Of  
25 Entry Of Judgment, to which a redacted document entitled Judgment, with "Order Of" crossed out,  
26 was attached. Evidently it was signed by the court on 2/11/09 and there is a stamp on the face page

1 indicating that it was filed on the same day. The Notice of Entry of Judgment states that judgment  
2 was entered in favor of plaintiff on February 11, 2009. As shown above, that is incorrect, as the  
3 clerk entered the judgment on February 17, 2009, and the notice is defective.

4 Code Civ. Proc. § 659.2 provides that a notice of intent to move for a new trial must be made  
5 within 15 days of mailing notice by the clerk of the entry of judgment, or of written notice of entry  
6 of the judgment by one of the parties, or 180 days after entry of the judgment, whichever is first. The  
7 clerk mailed no notice, there was no order of the court for the clerk to do so, the notice given by  
8 plaintiff was inaccurate and therefor defective, and the Supplemental Motion For New Trial was  
9 filed and served will within 180 days of the judgment. Clearly the court has jurisdiction to consider  
10 the motion.

11 B. Due Diligence Would Not Have Unearthed Ronald Ramsdell.

12 Plaintiff argues that affidavits objectionable on numerous grounds (see Objections  
13 To Affidavits filed herewith), particularly those of plaintiff, Dino LoPesio and Patricia LoPesio,  
14 establish beyond any doubt that Tom Redmond knew all about Ronald Ramsdell, should have  
15 located and deposed him, and should have presented him at trial. Not only are the supposed  
16 conversations flatly denied under oath by Redmond's Affidavit (filed herewith), they are offered by  
17 people who would say anything to support Behr.

18 It cannot be asserted with a straight face that if Thomas Redmond knew about Ronald  
19 Ramsdell he would not have told his lawyers about him. Moreover, is it reasonable to suppose that  
20 Behr would have disclosed the very person to whom she gave herpes, and who therefore had the  
21 ability to blow up her case?

22 Plaintiff asserts that all defendant would have had to do was ask, and Behr would have been  
23 forthcoming about her sexual past and the people in it. To the absolute contrary, Behr made every  
24 effort she could to obscure her past and to rely on the overbroad protection given to plaintiffs by  
25 California cases relating to the discovery of sexual matters. She knew she could rely on that  
26 protection, and used it to work the fraud on this court. Yet she would now be heard to say to

1 Redmond and the court, "Well, you shouldn't have trusted my sworn statements, and should have  
2 dug further." Of course, she doesn't say exactly *what* digging would have unearthed Ramsdell. The  
3 Incident Report from the Richfield Police Department of the Behr/Ramsdell dispute (Murphy Aff.  
4 Exh. F) is filed under Ramsdell's name, not Behr's, so Ramsdell's name would have to be known  
5 before one could find out anything about him. What Behr did and said to *prevent* the discovery of  
6 anybody like Ramsdell now follows.

7 The Complaint, verified by Patricia Behr on August 16, 2005, states at paragraph 12 that she  
8 "was free of any venereal disease at the time she commenced her intimate relationship with the  
9 Defendant."

10 Behr was asked about prior sexual partners in Interrogatories (Trial Exhibit 16, to which she  
11 made verified responses), and objected to the inquiry at Answer 4 as follows: "Behr objects to this  
12 interrogatory because it is an improper invasion into her constitutional right of privacy under the  
13 California Constitution, Article I, § 1, which recognizes a right of privacy, including sexual privacy.  
14 *See Vinson v. Sup. Ct.* (1987) 43 Cal.3d 833, 841; *Fults v. Sup. Ct.* (1979) 88 Cal.App.3d 899,904;  
15 *see also John B. v. Sup. Ct.* (2006) 38 Cal.4th 1177, 1182 (discovery limited to period within range  
16 of infection). Behr further objects to this interrogatory on grounds that it is not reasonably calculated  
17 to lead to the discovery of admissible evidence. The number of sexual partners the plaintiff may  
18 have had during her entire life time preceding her relationship with Redmond (51 years) is not likely  
19 to result in admissible evidence or lead to admissible evidence."

20 She was asked the basis for her contention that it was Redmond that gave her herpes. She  
21 answered to Interrogatory 11, "Behr states that during the 51-plus years of her life prior to meeting  
22 Redmond, she never once experienced any symptoms typically associated with, or indicative of, the  
23 herpes virus. Additionally, other than Redmond, she has not had sexual relations with any person  
24 that she knew or has since learned was infected with herpes."

25 There was yet a third sworn response. She was asked by Interrogatory 12, "State the date on  
26 which you first had any symptoms which you believe were related to herpes", and after a preamble,

1 she said she might have had “subclinical pre-symptoms without knowing they were indicative of  
2 herpes because she was not familiar with the virus or its manifestations. Behr states that the date on  
3 which she first noticed symptoms that she later learned were associated with the herpes virus was  
4 approximately mid-March [2004].”

5 Interrogatory 13 asked the date on which she first received treatment from a health care  
6 provider for symptoms which she thought was related to herpes and she responded, May 2005. She  
7 was asked the names of doctors or institutions at which she’d received ob-gyn treatment during the  
8 last 10 years, and she responded with those whose records were ultimately introduced at trial.

9 Behr was asked by Interrogatory 21 whether she had ever been diagnosed as having an STD.  
10 She replied that, “Other than the herpes that Behr contracted from defendant Redmond, she has not  
11 been diagnosed with a sexually transmitted disease of any kind.”

12 Thus, Behr made numerous sworn statements to the effect that Redmond is the only person  
13 who could have given her herpes and, by implication, that the “zone of infection” was limited to her  
14 relationship with Redmond. Behr should not now be heard to say that defendant was not entitled to  
15 rely on those sworn statements.

16 She also made sure that the subjects of the Interrogatory inquiries would not arise at trial.  
17 By her Motion In Limine No. 4, she convinced the court to exclude evidence of any of her prior  
18 relationships. Her grounds were that “the probative value of the evidence is substantially outweighed  
19 by the danger of undue prejudice to Plaintiff . . .” Motion, pp.1,2. In her Memorandum supporting  
20 Motion In Limine No. 4 plaintiff brazenly states: “There is no evidence which has been identified  
21 during the course of discovery to even remotely suggest that any of the persons with whom Behr has  
22 previously had a sexual relationship was infected with HSV.” Well, that is only because by her  
23 sworn statements she successfully hid such evidence. The court should not permit her to say now,  
24 “Well, I was a perjurer and you should have found me out.”

25 At her Memorandum of Points and Authorities supporting the Motion In Limine, p.3, Behr  
26 makes a point with which defendant wholeheartedly agrees – her past relationships and sexual

1 practices *are* relevant and admissible to show that Behr contracted HSV from a person other than  
2 Redmond. If that is the case she should have no objection to a jury hearing Mr. Ramsdell. Perhaps  
3 she has now waived the objections she made to Interrogatories 4, 14, 15, 17, and 19, all of which  
4 inquired into those very topics.

5 Plaintiff also stated in her Motion In Limine that the purpose could be accomplished through  
6 an examination of her medical records “which have already been provided.” All pertinent medical  
7 records were *not* provided. There were no medical records at all from Minnesota, where she lived  
8 for decades, and had her relationship with Ronald Ramsdell and many others. The first medical  
9 records she provided commenced in late 2001. Where were the records for the several years before  
10 that when she lived in the Palm Springs area? Where were the medical records from Los Angeles?<sup>4</sup>

11 C. Behr’s Claim That Ramsdell Is Lying Pales In Comparison To Her Perjured Trial  
12 Testimony.

13 The court will likely recall the instances at trial in which Behr was proved to be lying. She  
14 said she had a real estate license – it had expired years before. She said that she hardly ever went  
15 out because she was afraid she would meet someone to whom she might have to divulge her herpes  
16 – she was observed dressed to the nines and mouth kissing the Dr. Sharp. And now, because of the  
17 appearance of Ronald Ramsdell, more of plaintiff’s lies at trial have been exposed.

18 Behr testified that she raised her children alone, without help, after her divorce in 1983. The  
19 various affidavits or exhibits filed in connection with the post-trial pleadings reveal that she was  
20 seldom without a man. She lived with Frances Tello in 1984 for an unknown length of time (Fris.  
21 Joint Reply Decl. EXH. A); with Bob Lee from 1987 to 1991 (Affidavits of plaintiff and Carol  
22 Porwoll); and Ron Ramsdell, 1991-1992.

23 She testified that she didn’t seek back child support from her ex-husband because “people  
24 just didn’t do that sort of thing back then.” Why, then, the judgment she obtained against him in  
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26 <sup>4</sup> The court will recall that Behr lived in Los Angeles for a while and said she broke up with a  
boyfriend there in May of 2003. See Murphy argument, Trans. 411.

1 1985 and Hennepin County collected on her behalf in 1988? (Fris. Joint Reply Decl. EXH. B)

2 She claims to have been very careful and conservative in her sex practices. What about  
3 having unprotected sex with Ramsdell on their second date? But he's unworthy of belief, of course,  
4 being a jilted ex-lover and all. Defendant respectfully suggests that a determination of who is telling  
5 the truth will be up to the next jury to hear this matter.

6 D. Ramsdell's Affidavits Are More Than Sufficient to Justify A New Trial.

7 Plaintiff asserts that Ramsdell's testimony would have made no difference in the outcome  
8 of the case because, she claims, he is such a terrible person. Apart from the fact that the so-called  
9 assault was Behr on Ramsdell rather than the reverse, and that Ramsdell was defending himself,  
10 Ramsdell's testimony goes to the very heart of and entirely belies plaintiff's case. Ramsdell's  
11 testimony is certainly as pivotal as the new evidence which justified new trials in the old but still  
12 instructive cases which follow.

13 In *Bowler v. Roos* (1931) 213 Cal. 484, 2 P.2d 817, the evidence at trial was that plaintiff was  
14 subject to epileptic fits requiring constant care and attention. The newly discovered evidence  
15 demonstrated that plaintiff was regularly employed, earned good wages and was in good health.

16 In *Thomas v. Fursman* (1918) 177 Cal. 550, 171 P. 301, defendant testified at trial that a  
17 certain person was not his agent. The new evidence showed that in another action defendant had  
18 sworn that the person *was* his agent.

19 In *Spiers v. Spiers* (1917) 176 Cal. 557, 169 P. 73, the description of real property was  
20 uncertain because of the failure to locate a corner marker. The new evidence established that the  
21 corner marker had been concealed in shrubbery and had since been located.

22 And in *In Re Noonan's Estate* (1953) 119 Cal.App.2d 831, 260 P.2d 247, the parties disputed  
23 heirship and each had filed affidavits excluding the other from the necessary relationship. A relative  
24 of both was discovered, who attested not only that each was an heir but that both had visited together  
25 in the home of their aunt. In holding that a new trial was appropriate the Court said:

26 "It is the primary function of the courts to see that justice is done among litigants and

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an examination of this record so strongly suggests that justice has not been done in this case that the newly discovered evidence should be considered by the probate court in reaching its ultimate decision. Otherwise it appears that a grave injustice may be worked on the appellants. We content ourselves, as expressing our conclusion, with a quotation from *Speirs v. Spiers* [citation *ante*]: ‘While this court seldom interferes with the discretion of the trial court in denying a motion for a new trial for newly discovered evidence, yet, in view of the peculiar nature of the question involved, we believe this to be one of the exceptional cases in which the action of the court below in refusing a new trial should be overruled. [Citations omitted.]’”

Certainly this case is no less exceptional.

**III. CONCLUSION**


“Having sex with someone without disclosing that you are infected is against the law. That is conduct which is outrageous, and when it results in someone contracting a sexually transmitted disease that they have to live with for the rest of their life, that is not something that anybody in a civilized society should be expected to live with, certainly not with the shame and humiliation and embarrassment that goes from it.” That is a statement made by Mr. Murphy in his closing argument. Would he now say the same thing with regard to his client’s conduct toward Mr. Ramsdell?

“Now, you heard Mrs. Behr talk to you about what she’s experienced since being diagnosed with this disease. She’s testified about the humiliation, the embarrassment that she experiences, that she’s very much afraid to tell her family and her friends. She hadn’t even told Dr. Sharp, who came here to testify on Friday, because she’s too embarrassed for anybody to know what’s happened to her.” Oh, really? Rings rather hollow in view of the press release.

If there was ever a case which cried out for judicial intervention, it is this one. The court should grant either j.n.o.v., as defendant has moved, or grant a new trial because of the excessiveness of the verdict and/or this newly discovered evidence.

Respectfully submitted this 2<sup>nd</sup> day of April, 2009.

FRISBEE & BOSTOCK, PLC

  
\_\_\_\_\_  
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