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10 **UNITED STATES DISTRICT COURT**  
11 **CENTRAL DISTRICT OF CALIFORNIA**  
12 **WESTERN DIVISION**

13 MANUELA ZERMENO, individually and  
14 on behalf of the general public; and JUAN A.  
15 ZERMENO, individually and on behalf of  
16 the general public,

17 Plaintiffs,

18 v.

19 PRECIS, INC., an Oklahoma Corporation,  
20 d.b.a. CARE ENTRÉE, THE CAPELLA  
21 GROUP, INC., a Texas Corporation d.b.a.  
22 CARE ENTRÉE, and DOES 1 through 10,  
23 inclusive,

24 Defendants.

Case No. CV 03-6974 SJO (MANx)

HON. S. JAMES OTERO

FIRST AMENDED COMPLAINT  
FOR:

1. INJUNCTIVE RELIEF FOR VIOLATION OF HEALTH AND SAFETY CODE § 445
2. CANCELLATION OF CONTRACT AND DAMAGES PURSUANT TO CAL. CIVIL CODE §§ 1812.119 AND 1812.123
3. INJUNCTIVE RELIEF AND RESTITUTION FOR VIOLATION OF CAL. BUSINESS AND PROFESSIONS CODE § 17200

Demand for Jury Trial

1 **INTRODUCTION**

2 1. This action seeks redress for defendants' unlawful business practices  
3 related to their discount medical services business. Plaintiffs believed they would receive  
4 medical services at discount prices when they signed up for membership in defendants'  
5 medical service plan. Soon they discovered that the discounts and savings they were  
6 promised did not exist. Plaintiffs bring this action individually and on behalf of the general  
7 public seeking injunctive relief and restitution pursuant to California Health and Safety Code  
8 § 445 and Business and Professions Code § 17200 and damages pursuant to California Civil  
9 Code § 1812.123.

10 **PARTIES**

11 2. Plaintiffs, Manuela Zermeno and Juan A. Zermeno , are husband and wife and  
12 are residents of the County of Los Angeles, State of California.

13 3. Plaintiffs are informed and believe and thereon allege that defendant The  
14 Capella Group, Inc. (“The Capella Group”) is a Texas corporation doing business in the  
15 County of Los Angeles, State of California as Care Entrée. The Capella Group operates and  
16 markets in California as Care Entrée, the trade name of a discount buying membership  
17 service. The Cappella Group controlled Care Entrée when the plaintiffs entered into the  
18 discount buying services contract in 2001.

19 4. Plaintiffs are informed and believe and thereon allege that defendant Precis,  
20 Inc. (“Precis”) is an Oklahoma corporation doing business in the County of Los Angeles,  
21 State of California as Care Entrée. Care Entrée is the trade name of a discount buying  
22 membership service currently marketed by Precis. Plaintiffs are informed and believe and  
23 thereon allege that Precis is the parent corporation of The Cappella Group and that Precis  
24 acquired Care Entrée as part of its acquisition of The Cappella Group, which controlled Care  
25 Entrée when the plaintiffs entered into the discount buying services contract in 2001.

26 5. Plaintiffs are ignorant of the true names and capacities of defendants sued  
27 herein as Does 1 through 10, inclusive, and therefore sue defendants by such fictitious names.  
28 Plaintiffs will amend the complaint to allege their true names and capacities when they have

1 been ascertained. Plaintiffs are informed and believe, and thereon allege, that each of the  
2 said fictitiously named defendants is responsible in some manner for the occurrences herein  
3 alleged, and that plaintiffs' injuries as herein alleged, were proximately caused by the acts  
4 and/or omissions of each of them.

5 6. Plaintiffs are informed and believe and thereon allege that at all times herein  
6 mentioned, each of the defendants was acting as an agent, servant, and/or employee of the  
7 remaining defendants and was at all times acting within the course and scope of said agency,  
8 service and servility.

### 9 **FACTUAL ALLEGATIONS**

10 7. Plaintiffs are monolingual Spanish-speakers who had no health insurance at  
11 the time they signed up for defendants' medical service plan that offered services at discount  
12 prices.

13 8. On December 3, 2001, plaintiffs signed up for the Care Entrée Total Care  
14 program expecting to obtain health care services at a discount price as they had read on an  
15 advertisement.

16 9. The Care Entrée advertisement represented that members could save up to  
17 80% for medical and dental services; 50% for vision care; and up to 40% for prescription  
18 medicines, including prescriptions for medicines that insurance programs do not cover, for  
19 weight control, smoking cessation, insulin, syringes and anxiety control medicines. The Care  
20 Entrée advertisement represented that members could receive savings up to 50% or more  
21 through a network of more than 315,000 qualified providers in all specialties.

22 10. Plaintiffs made arrangements to pay the monthly membership fees of \$54.95  
23 directly out of their bank account. Plaintiffs were given an ID number and a list of providers  
24 that were allegedly participating in the program.

25 11. Plaintiff, Manuela Zermeno, contacted the dental offices of one of the  
26 providers listed as a Care Entrée provider in the area where she resides. Manuela Zermeno  
27 was told that the dental office was not participating in any discount program, and they had  
28 never heard of Care Entrée.

1           12.     Plaintiffs called Care Entrée’s representative, Sarita Rodriguez. Ms.  
2 Rodriguez advised plaintiffs to call the provider again. Plaintiffs were also advised by Sarita  
3 Rodriguez to mention the name Carrington PPO if the dental office did not recognize the  
4 Care Entrée name. Plaintiffs followed Ms. Rodriguez’s directions, but were told by the  
5 dental office that they did not recognize the name Carrington PPO either.

6           13.     Plaintiff Manuela Zermeno called another Care Entrée dental office, and was  
7 told again that they did not recognize the Care Entrée or Carrington PPO names. Plaintiffs  
8 went back to Ms. Rodriguez’s office requesting that their membership in the program be  
9 cancelled. Plaintiffs faxed a written cancellation to Care Entrée’s Texas office on December  
10 28, 2001. That same cancellation note was sent via facsimile to Care Entrée’s Texas office  
11 on several occasions, and plaintiffs spoke with several of Care Entrée’s  
12 agents/representatives.

13           14.     Care Entrée not only ignored plaintiffs, but continued to take the monthly  
14 fee out of plaintiffs’ bank account every month until December 2002.

15           15.     Plaintiffs never received an ID card from Care Entrée.

16           16.     The terms and conditions of the Care Entrée program state that the program  
17 fees will be refunded if the membership is cancelled within the first 30 days of enrollment.

18           17.     Nevertheless, monthly fees of \$54.95, totaling \$714.35, were taken from the  
19 plaintiffs’ bank account from December 2001 through December 2002. These fees were  
20 taken by two corporations, The Cappella Group and Precis.

21           18.     Defendants have refused to provide a full refund. In April 2003, counsel for  
22 plaintiffs mailed a letter to Care Entrée demanding a full refund of all fees collected from the  
23 plaintiffs’ bank account.

24           19.     Vice-President and General Counsel for Precis, David P. May, sent a letter  
25 dated May 7, 2003 stating that Precis would only refund \$164.85 to plaintiffs. A check for  
26 \$164.85 was sent to plaintiffs. Plaintiffs have never received the balance of \$549.50 taken  
27 from their bank account.

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1 **FIRST CAUSE OF ACTION**  
2 **FOR VIOLATION OF CALIFORNIA HEALTH AND SAFETY CODE SECTION 445**  
3 (All Plaintiffs Against All Defendants)

4 20. Plaintiffs re-allege and incorporate by reference each and every allegation  
5 contained in paragraphs 1 through 19, inclusive, of this complaint as though set forth in full  
6 herein.

7 21. Plaintiffs are informed and believe and thereupon allege that beginning at an  
8 exact date which is unknown to plaintiffs, but from at least December 2001, defendants have  
9 violated and continue to violate Health & Safety Code § 445 because defendants provide  
10 medical referrals for profit.

11 22. Defendants' unlawful business practices have injured and continue to cause  
12 irreparable injury to members of the general public, who have no adequate remedy at law.

13 23. Plaintiffs are informed and believe that, unless defendants are restrained from  
14 so doing, defendants will continue to violate Health and Safety Code § 445. Unless  
15 defendants' conduct is enjoined, defendants will continue to provide medical referrals for  
16 profit. Relief of damages alone for defendants' continuing unlawful business practices would  
17 require a multiplicity of suits and is not subject to accurate calculation.

18 24. Plaintiffs are entitled to temporary, preliminary and permanent injunctive  
19 relief preventing defendants from continuing to violate Health and Safety Code § 445.

20 **SECOND CAUSE OF ACTION**  
21 **FOR DAMAGES PURSUANT TO CALIFORNIA CIVIL CODE SECTION 1812.123**  
22 (All Plaintiffs Against All Defendants)

23 25. Plaintiffs re-allege and incorporate by reference each and every allegation  
24 contained in paragraphs 1 through 24, inclusive, of this complaint as though set forth in full  
25 herein.

26 26. The Care Entrée program purports to provide its clients the ability to purchase  
27 goods and services at a price which is represented to be lower than those generally charged.  
28 Care Entrée's advertisement represented to plaintiffs that it was a savings program for health  
care throughout the United States.

1           27.     The Capella Group is a discount buying organization as defined in California  
2 Civil Code § 1812.101(a). Precis is a discount buying organization as defined in Civil Code  
3 § 1812.101(a). Precis is the successor in interest to The Capella Group. The Capella Group  
4 and Precis have used the trade name Care Entrée to market their discount buying  
5 services.

6           28.     The agreement between plaintiffs and defendants, attached hereto as Exhibit  
7 “A”, was and is a contract for discount buying services as defined in Civil Code §  
8 1812.101(b).

9           29.     The agreement violates Civil Code § 1812.100, et. seq., as follows:

10          30.     Civil Code § 1812.103 requires every discount buying organization to have a  
11 \$20,000 bond issued by a surety company admitted to do business in California and have  
12 same filed with the Secretary of State.

13          31.     Civil Code § 1812.107 requires disclosure of the existence of the bond in its  
14 contracts. The contract violates both §§ 1812.103 and 1812.107 because there is no bond by  
15 Care Entrée filed with the Secretary of State, and the contract fails to disclose the existence  
16 of a bond or the time period of the contract.

17          32.     The contract also violates § 1812.109 for failing to include a two-year contract  
18 limitation period. The contract violates § 1812.110 for failing to include a limitation on the  
19 waiting period for services. The contract also violates § 1812.118 for failing to include a  
20 three-day right to rescission.

21          33.     Because the contract fails to include these required elements, it is voidable  
22 and can be cancelled pursuant to Civil Code § 1812.119.

23          34.     Since plaintiffs cancelled the contract they were entitled to a complete refund  
24 in December of 2001. Nevertheless, defendants withdrew \$714.35 from plaintiffs’ bank  
25 account.

26          35.     Plaintiffs have been damaged in that defendants have wrongfully taken and  
27 retained \$549.50 from plaintiffs.

28          36.     Pursuant to Civil Code § 1812.123, plaintiffs are entitled to treble damages.

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**THIRD CAUSE OF ACTION  
FOR VIOLATION OF CALIFORNIA BUSINESS AND PROFESSIONS  
CODE SECTION 17200**

(All Plaintiffs Against All Defendants)

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37. Plaintiffs reallege and incorporate by reference each and every allegation contained in paragraphs 1 through 36, inclusive, of this complaint as though set forth in full herein.

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38. Plaintiffs jointly bring this cause of action on behalf of themselves and members of the general public pursuant to California Business and Professions Code §§ 17200, et. seq., California Code of Civil Procedure § 526, and the laws of equity.

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39. The conduct of defendant as alleged herein has been, continues to be, and unless enjoined by this court, will continue to be deleterious to the general public. Plaintiffs are seeking to enforce important rights affecting the public interest within the meaning of Business and Professions Code §§ 17200, et. seq., Health and Safety Code § 445, and Civil Code §§ 1812.100, et seq..

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40. Defendants are in the discount buying services business and will continue to solicit members of the general public. Defendants' conduct, as described above, is unlawful and constitutes an ongoing and continuous unlawful business practice by, inter alia, violating numerous consumer protection laws.

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41. Plaintiffs are informed and believe and thereupon allege that beginning at an exact date which is unknown to plaintiffs, but from at least December 2001, defendants have committed unlawful business practices as defined by Business and Professions Code § 17200, by engaging in the unlawful business practices which are set forth below.

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42. Defendants have violated and continue to violate Civil Code § 1812.103 because defendants do not have a \$20,000 bond issued by a surety company admitted to do business in the State of California and filed with the Secretary of State.

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43. Defendants have violated Civil Code § 1812.107 because defendants do not disclose the existence of a bond in its form contracts.

1           44.     The form contract also violates Civil Code § 1812.109 for failing to include a  
2 two-year contract limitation period. The form contract also violates Civil Code § 1812.110  
3 for failing to include a limitation on the waiting period for services.

4           45.     The form contract also violates Civil Code § 1812.118 for failing to include a  
5 three-day right to rescission.

6           46.     Defendants' discount medical services business violates Health and Safety  
7 Code § 445.

8           47.     Defendants' unlawful business practices have injured and continue to cause  
9 irreparable injury to members of the general public, who have no adequate remedy at law.

10          48.     Plaintiffs are informed and believe that, unless defendants are restrained from  
11 so doing, defendants will continue to engage in said unlawful business practices. Unless  
12 defendants' conduct is enjoined, California customers will be misled and harmed. Relief of  
13 damages alone for defendants' continuing unlawful business practices would require a  
14 multiplicity of suits and would not provide complete relief.

15          49.     Pursuant to Business and Professions Code § 17200, et seq., Code of Civil  
16 Procedure § 526, and common law, plaintiffs are entitled to temporary, preliminary and  
17 permanent injunctive relief enjoining all of defendants' unfair or unlawful business practices.

18          50.     Plaintiffs and all other consumers who have purchased defendants' services  
19 within four years prior to the filing of this action are entitled to restitution of all funds  
20 improperly obtained by defendants.

21           WHEREFORE, plaintiffs pray for judgment as follows:

22           **On the First Cause of Action**

23           1.     For a temporary restraining order and preliminary and permanent injunctions,  
24 restraining and enjoining defendants and its agents, employees and representatives from  
25 continuing to violate Health & Safety Code § 445;

26           **On the Second Cause of Action**

- 27           1.     That this court declare the agreement, attached as Exhibit "A", cancelled;  
28           2.     For damages in the amount of \$1,648.50;

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**On the Third Cause of Action**

1. For restitution to plaintiffs and all other consumers who have purchased defendants' services within four years of the filing of this action in amounts according to proof;

2. For a temporary restraining order and preliminary and permanent injunctions, restraining and enjoining defendants and its agents, employees and representatives from continuing to violate Civil Code §1812.100 et. seq.; Health and Safety Code §445; and from engaging in any other unfair or unlawful business practice;

**On All Causes of Action**

- 1. For costs of suit in this action; and
- 2. For such other and further relief as the court may deem just and proper.

Dated: December 19, 2003

NEIGHBORHOOD LEGAL SERVICES  
OF LOS ANGELES COUNTY, INC.

By: \_\_\_\_\_  
Alejandra Cedillo  
Attorneys for Plaintiffs