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9 **UNITED STATES DISTRICT COURT**

10 **CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**

11 MANUELA ZERMENO, etc., et al.

12 Plaintiffs,

13 v.

14 PRECIS, INC., etc., et al.

15 Defendants.

16 CALIFORNIA FOUNDATION FOR
17 BUSINESS ETHICS, INC., etc.,

18 Plaintiffs,

19 v.

20 PRECIS, INC., etc., et al.

21 Defendants.

22 **Case No. CV 03-6974 SJO (MANx)**
23 *(Consolidated with Case No. 03-6997*
24 *SJO (MANx) Dec. 9, 2003)*

25 **JOINT STIPULATION FOR**
26 **MOTION TO COMPEL ANSWERS**
27 **TO INTERROGATORIES**
28 **(Local Rule 37-2)**

Hon. S. James Otero

Date: June 22, 2004

Time: 10:00 a.m.

Place: Courtroom B, 8th Floor

Discovery Cut-off: Aug. 10, 2004

Pre-trial Conference: Nov. 1, 2004

Trial: Nov. 9, 2004

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1 **Plaintiff’s Introduction**

2 This action challenges several business practices of a discount health care
3 referral service. This motion seeks to compel answers to three interrogatories
4 that ask for the identity of the consumers who purchased defendants’ health
5 care referral services and the people who sell and market those services. Fed.
6 R. Civ. P. 37(a)(2). These individuals are first-hand witnesses to the business
7 practices challenged in this action.

8 On April 15, 2004, counsel for the parties met in person to attempt to
9 resolve these issues without a motion, but could not do so. Declaration of
10 David Pallack, ¶ 3.

11 This suit seeks to enjoin defendants’ unlawful business practices and
12 obtain restitution for consumers throughout the state pursuant to California’s
13 unfair business practices act, Business and Professions Code §§17200-17209.
14 These statutes allow individuals to sue on behalf of the general public as
15 “private attorneys general even if they have not themselves been personally
16 harmed or aggrieved” (*Consumers Union of U.S. v. Fisher Dev., Inc.*, 208
17 Cal.App.3d 1433, 1439 (1989)) and “to introduce evidence not only of practices
18 which affect them individually, but also similar practices involving other
19 members of the public who are not parties to the action.” *Cisneros v. U.D.*
20 *Registry, Inc.*, 39 Cal.App.4th 548, 564 (1995) (citations omitted); *Hangarter v.*
21 *Paul Revere Life Ins. Co.*, 236 F.Supp.2d 1069, 1107-08 (N.D. Cal. 2002).

22 Plaintiffs allege defendants engage in several unlawful business practices
23 including: (1) operating a discount health care referral business in which the
24 referred physicians are not aware of the program and do not provide discounts,
25 (2) not allowing consumers to cancel their contracts and obtain refunds, (3)
26 failing to post a bond or give consumers notice that they posted a bond, (4)
27 having contracts that extend more than two years, (5) having contracts with
28 unlawful waiting periods, and (6) failing to give consumers notice of their right

1 to rescind within three days. These actions violate California’s discount buying
2 statutes, Civil Code §§1812.100 et seq., Cal. Health and Safety Code §445, and
3 are otherwise unlawful under Business and Professions Code §17200.

4 Plaintiff seeks the identity of three groups of people who have direct
5 knowledge about defendants’ business practices: the consumers who signed up
6 for defendants’ referral service, the people who sold the service, and the people
7 who marketed the service. As witnesses to the claims and defenses of the
8 parties, their identities are expressly discoverable under Fed. R. Civ. P.
9 26(b)(1), which allows discovery of “the identity and location of persons having
10 knowledge of any discoverable matter.”

11 Defendants object to providing this information on primarily two bases:
12 relevance and privacy. These issues are discussed in detail in regard to each
13 interrogatory. In short, the consumers who purchased defendants’ referral
14 services and the employees who sell and market them have personal knowledge
15 of defendants’ business practices and are crucial to determine the nature and
16 extent of defendants’ unlawful practices. It is reversible error to deny their
17 testimony at trial (*Cisneros v. U.D. Registry, Inc.*, 39 Cal.App.4th at 564
18 (citations omitted); *Hangarter v. Paul Revere Life Ins. Co.*, 236 F.Supp.2d at
19 1107-08) and the scope of discovery is broader than the evidence admissible at
20 trial. Fed. R. Civ. P. 26(b)(1).

21 Privacy concerns must be balanced against the need for discovery.
22 *Olympic Club v. Superior Court*, 229 Cal.App.3d 358, 364 (1991), *Ragge v.*
23 *MCA/Universal Studios*, 165 F.R.D. 601, 604-05 (C.D. Cal. 1995). As
24 plaintiff’s counsel explained at the conference of counsel, plaintiff needs to
25 contact other consumers to determine the full nature and extent of defendants’
26 unlawful business practices. Plaintiffs’ counsel suggested that they send form
27 letters to the consumers who purchased defendants’ services allowing them to
28 contact plaintiff’s counsel if they want to. If the consumers do not contact
plaintiffs’ counsel, plaintiffs’ counsel will not contact them further. Identifying

1 defendants' employees does not invade any privacy rights, but if it did, this
2 process would protect those rights as well.

3 **Defendants' Introduction**

4 Plaintiffs' attempt to use the discovery process to conduct a fishing
5 expedition should not be condoned by this Court. Discovery, "like all matters
6 of procedure, has ultimate and necessary boundaries." *Oppenheimer Fund, Inc.*
7 *v. Sanders*, 437 U.S. 340, 351 (1978). Accordingly, "[d]iscovery of matter 'not
8 reasonably calculated to lead to the discovery of admissible evidence' is not
9 within the scope of Rule 26(b)(1)." *Id.* at 352.

10 In *Oppenheimer Fund, Inc. v. Sanders*, the United States Supreme Court
11 held that the names and identities of class members other than the
12 representative plaintiffs "cannot be forced into the concept of 'relevancy' . . .
13 [because] respondents do not seek this information for any bearing that it might
14 have on issues in the case." *Id.* at 352. Under *Oppenheimer Fund*, it is proper
15 for a court to analyze the *purpose* for a Rule 26 discovery request. *Id.* at 353,
16 fn. 17. If that purpose is not relevant to the issues in the case, the court should
17 deny the request.

18 When the parties met and conferred regarding this issue on April 15,
19 2004, counsel for Plaintiffs stated that they are requesting this information to
20 assist them in contacting nonparties to determine if they suffered injuries
21 similar to those alleged by Plaintiffs. Ochoa Decl., ¶3. Whether other persons
22 suffered similar injuries is clearly not relevant to Plaintiffs' claims that the
23 discount health care industry is *per se* illegal under the language of Cal. Health
24 and Safety Code § 445 or that the industry must comply with the requirements
25 of Cal. Civil Code § 1812.100 *et seq.*, and Plaintiffs wisely do not so contend.
26 Instead, Plaintiffs assert that this information is relevant to their claim under the
27 UCL, Cal. Bus. & Prof. Code § 17200. However, California courts have clearly
28 stated that proof of the individual harm caused by a business practice is
irrelevant to UCL claims. *Prata v. Sup. Ct.*, 91 Cal.App.4th 1128, 1146 (2001)

1 (“individual matters of proof [are] irrelevant to liability under the UCL”).
2 Rather, “[t]he issue is . . . whether the program as a whole [is] *likely to mislead*”
3 members of the public. *Id.* Therefore, a representative plaintiff “need not prove
4 that members of the public actually were deceived, relied upon the fraudulent
5 practice, or sustained any damage.” *Id.* at 1144.

6 In this case, Plaintiffs assert that Defendants violate the UCL in a number
7 of ways. However, the experiences of individual members are not relevant to
8 proving these violations. First, Plaintiffs assert that Defendants operate a
9 discount health care referral business in which the alleged providers are not
10 aware of the program and do not provide discounts. However, whether a health
11 care provider knows of and participates in the Care Entrée program can only be
12 determined by questioning the providers themselves – and Defendants have
13 already provided Plaintiffs with a current provider list. Second, Plaintiffs assert
14 that Defendants do not allow consumers to cancel their contracts and obtain
15 refunds. However, information about members’ attempted cancellation is
16 available from Defendants’ corporate records. Third, Plaintiffs assert that
17 Defendants violate Civil Code §§ 1812.100 *et seq.* by (a) failing to post a bond
18 or give consumers notice that they posted a bond, (b) having contracts that
19 extend more than two years, (c) having contracts with unlawful waiting periods,
20 and (d) failing to give consumers notice of their right to rescind within three
21 days. However, information about these alleged violations is available from the
22 Care Entrée contracts themselves. Furthermore, Defendants are willing to
23 stipulate that they have not complied with all the requirements of §§ 1812.100
24 *et seq.* because Defendants do not believe that the Care Entrée program is a
25 discount buying club. By attempting to prove their UCL claim with anecdotal
26 evidence, Plaintiffs here seek to obtain precisely the kind of individual proof
27 that the *Prata* court found irrelevant.

28 The identities of other Care Entrée members are also subject to those
members’ privacy rights. The United States Constitution protects “the

1 individual interest in avoiding disclosure of personal matters.” *Whalen v. Roe*,
2 429 U.S. 589, 599 (1977); *see also Conant v. McCaffrey*, 1998 WL 164946
3 (N.D. Cal.) (discussing the privacy rights of nonparties with respect to medical
4 information). This is not a case like *Olympic Club v. Superior Court*, cited by
5 Plaintiffs, in which there were only 41 names at issue and the government was
6 bringing an action under the Unruh Civil Rights Act. *See Olympic Club*, 229
7 Cal.App.3d at 364 (1991). There are thousands of Care Entrée members in
8 California who have not been injured and who are likely to consider as private
9 and personal their identities and their membership in the Care Entrée program.
10 Defendants are simply not in a position to waive the privacy rights of their
11 individual members – who are nonparties to this action – absent the members’
12 express agreement, especially when the information sought is irrelevant to the
13 issues in this case.

14 In response to Defendants’ objections, Plaintiffs’ counsel asserts that they
15 have offered to compromise by sending letters to each Care Entree member and
16 asking them to respond. Pallack Decl., ¶3. This offer is no compromise at all;
17 Plaintiffs would still obtain the names of all Care Entrée members in California,
18 and any information they could get from those members would still be
19 irrelevant. That Plaintiffs’ fishing expedition *may* turn up individuals with
20 claims similar to plaintiffs does not change the fact that such evidence, even if
21 found, is irrelevant to Plaintiffs’ UCL claim.

22 Because the experiences of other Care Entrée members are both
23 irrelevant to plaintiffs UCL claim and are subject to the members’ privacy
24 rights, the discovery Plaintiffs seek must not be allowed.

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1 **INTERROGATORIES, OBJECTIONS AND CONTENTIONS**

2 **Interrogatory No. 3**

3 IDENTIFY¹ each CARE ENTRÉE MEMBER² within California from
4 August 13, 1999 to the present.

5 **Defendant's Response to Interrogatory No. 3**

6 In addition to the General Objections set forth above³ and incorporated
7 herein by this reference, Precis objects to this interrogatory because it has not

8 _____
9 ¹ IDENTIFY means state the name, address and telephone number of the person
10 or entity referred to.

11 ² CARE ENTRÉE MEMBER means any individual or family enrolled in the
12 CARE ENTRÉE HEALTH SERVICES PROGRAM.

13 ³ General Objections: Precis makes and hereby incorporates by reference the
14 following general objections, whether or not separately set forth, in response to
15 each interrogatory propounded by Plaintiff:

- 16 1. Precis objects to the Interrogatories to the extent they purport to impose
17 obligations on Precis other than those imposed by the Federal Rules of
18 Civil Procedure.
- 19 2. Precis objects to the Interrogatories as overly broad, unduly burdensome
20 and/or duplicative to the extent they seek information that was generated
21 by or is equally available to Plaintiff.
- 22 3. Precis objects to the Interrogatories insofar as they assume facts that are
23 not in evidence. By responding to these Interrogatories, Precis does not
24 admit or agree with any explicit or implicit assumption made in these
25 Interrogatories.
- 26 4. Precis objects to the Interrogatories to the extent they are overly broad or
27 seek the discovery of information that is not relevant in that it is not
28 reasonably calculated to lead to the discovery of admissible evidence.
5. Precis objects to the Interrogatories to the extent that they seek
information protected by the attorney-client privilege, the work-product
doctrine or any other applicable privilege, Such responses as may
hereafter be given shall not include any information protected by such
privileges or doctrines, and inadvertent disclosure of such information
shall not be deemed a waiver of any such privilege or doctrine.
6. Precis object to the Interrogatories to the extent they seek disclosure of
information that reflects or discloses trade secrets or other confidential,
financial or proprietary information of Precis or third parties.

1 completed its (a) investigation of the facts relating to this case, (b) discovery in
2 this action, or (c) preparation for trial. Precis also objects to this interrogatory
3 to the extent it seeks information protected from disclosure by the attorney-
4 client or joint-defense privilege, or the work-product doctrine. Precis further
5 objects to this interrogatory because it is irrelevant, overly broad, unduly
6 burdensome, oppressive and not reasonably calculated to lead to the discovery
7 of admissible evidence to the extent that it (1) seeks information related to any
8 claims accruing before the applicable statute of limitations period, (2) seeks
9 information that is irrelevant to the Zermenos' claim, and (3) seeks information
10 that is protected by the privacy rights of third parties.

11 **Plaintiff's Contentions**

12 **1. Relevance to Zermenos' Claims**

13 The Zermenos are suing defendants on behalf of themselves and the
14 general public under California's unfair business practices act (also known as
15 the unfair competition law), Business and Professions Code §§17200-17209.
16 These statutes allow individuals to sue on behalf of the general public as
17 "private attorneys general even if they have not themselves been personally
18 harmed or aggrieved" (*Consumers Union of U.S. v. Fisher Dev., Inc.*, 208
19 Cal.App.3d 1433, 1439 (1989)) and "to introduce evidence not only of practices
20 which affect them individually, but also similar practices involving other
21 members of the public who are not parties to the action." *Cisneros v. U.D.*
22 *Registry, Inc.*, 39 Cal.App.4th at 564 (citations omitted); *Hangarter v. Paul*
Revere Life Ins. Co., 236 F.Supp.2d at 1107-08.

23 Business and Professions Code §17200 prohibits "any unlawful, unfair, or
24 fraudulent business act or practice." "The unlawful practices prohibited by section
25 17200 are any practices forbidden by law, be it civil or criminal, federal or state, or
26 municipal, statutory, regulatory or court made." *Saunders v. Superior Court*, 27
27 Cal.App.4th 832, 838-39 (1994); *Chabner v. United of Omaha Life Ins. Co.*, 225
28 F.3d 1042, 1048 (9th Cir. 2000). "[S]ection 17200 'borrows' violations of other

1 laws and treats them as unlawful practices independently actionable” under the
2 unfair business practices act. *Farmers Ins. Exchange v. Superior Court* (1992) 2
3 Cal.4th 377, 383 (1992); *Chabner v. United of Omaha Life Ins. Co.*, 225 F.3d at
4 1048.

5 Section 17200 also prohibits any practice that is deemed *unfair* even though
6 it may not be unlawful. “‘Unfair’ simply means any practice whose harm to the
7 victim outweighs its benefits.” *Saunders v. Superior Court*, 27 Cal.App.4th at 839.

8 The act is not limited to anti-competitive business practices, but also protects
9 consumers. *Committee on Children’s Television, Inc. v. General Foods Corp.*, 35
10 Cal.3d 197, 209-10 (1983) (The language of section 17200 “demonstrates a clear
11 design to protect consumers as well as competitors”).

12 Under the unfair business practices act, “a private plaintiff who has
13 himself suffered *no injury at all* may sue to obtain relief for others.” *Stop Youth*
14 *Addiction, Inc. v. Lucky Stores, Inc.*, 17 Cal.4th 553, 561 (1998) (citations
15 omitted, emphasis added); *Chabner v. United of Omaha Life Ins. Co.*, 225 F.3d
16 at 1048. “Moreover, individuals can bring actions under the unfair business
17 practices act alleging violations of laws even if those laws do not provide a
18 private right of action themselves.” *Stop Youth Addiction v. Lucky Stores*, 17
19 Cal.4th at 562-63; *Chabner v. United of Omaha Life Ins. Co.*, 225 F.3d at 1048.
20 The Zermenos may thus redress all of defendants’ unfair or unlawful business
21 practices – even those that have not harmed them personally. *Id.*

22 The identity of Care Entrée’s members is directly relevant to the claims
23 and defenses of the parties (Fed. R. Civ. P. 26(b)) as each member has
24 knowledge of defendants’ contracts and other business practices. The
25 Zermenos allege Care Entrée’s discount health care referral business is
26 deceptive because defendants refer their members to providers who are unaware
27 of the program and do not provide discounts to Care Entrée members. First
28 Amended Complaint (filed Jan. 21, 2004) (1st Am. Cmpt.), ¶¶ 8-13, 37-50.
They allege defendants do not allow consumers to cancel their contracts and

1 obtain refunds as required by Civil Code §1812.119. 1st Am. Cmpt., ¶¶ 8-19,
2 25-50. They allege defendants’ contracts do not give consumers notice that
3 they posted a bond as required by Civil Code §§1812.103 and 1812.107. 1st
4 Am. Cmpt., ¶¶ 30, 31, 42, 43. They allege defendants’ contracts do not contain
5 the two-year limitation required by §1812.109, a limitation on the waiting
6 period as required by §1812.110 or notice of the three-day right to rescind
7 under §1812.118. 1st Am. Cmpt., ¶¶ 32, 44, 45.

8 All of Care Entrée’s members have direct knowledge of their contracts
9 with Care Entrée and other aspects of Care Entrée’s business practices.
10 Plaintiffs need to contact these members to evaluate the issues, prepare for trial,
11 and discuss settlement. Discovery about “the identity and location of persons
12 having knowledge of any discoverable matter” is expressly allowed under Fed.
13 R. Civ. P. 26(b)(1). It is reversible error to limit plaintiffs’ evidence at trial to
14 their own facts in a §17200 case. *Cisneros v. U.D. Registry, Inc.*, 39
15 Cal.App.4th at 564 (“In proving an unfair business practice violation, claimants
16 are entitled to introduce evidence not only of practices which affect them
17 individually, but also similar practices involving other members of the public
18 who are not parties to the action.”) (citations omitted); *Hangarter v. Paul*
Revere Life Ins. Co., 236 F.Supp.2d at 1107-08.

19 Defendants argue that “individualized proof is irrelevant” under the
20 unfair business practices act, citing *Prata v. Superior Court*, 91 Cal.App.4th
21 1128, 1146 (2001). Joint Stipulation at 3. Plaintiffs agree that the court is not
22 required at trial to “examine each consumer transaction to establish a violation
23 of section 17200” because “the issue is whether the program as a whole is likely
24 to mislead members of the public.” Joint Stipulation at 4 (citing *Prata v.*
25 *Superior Court*, 91 Cal.App.4th at 1143) (brackets, ellipsis, italics and internal
26 quotation marks omitted). But plaintiffs must contact other consumers and
27 employees to determine the *nature and extent* of defendants’ unlawful business
28 practices. And, while it may not be *necessary* to examine each consumer

1 transaction at trial, it is reversible error to prevent plaintiffs from presenting
2 evidence from other victims. *Cisneros v. U.D. Registry*, 39 Cal.App.4th at 564;
3 *Hangarter v. Paul Revere Life Ins. Co.*, 236 F.Supp.2d at 1107-08. Moreover,
4 the scope of discovery is broader than the evidence allowed at trial. Fed. R.
5 Civ. P. 26(b)(1).

6 Defendants' claims of irrelevance lack merit.

7 **2. Right to Privacy**

8 Plaintiff acknowledges that Care Entrée members have a general right to
9 privacy. That right is not absolute, however, and must be balanced against the
10 need for discovery. *Olympic Club v. Superior Court*, 229 Cal.App.3d at 364.
11 That balance is met by allowing the discovery but giving the affected persons
12 notice and an opportunity to be left alone. *Id.* at 361; Weil & Brown, *Cal.*
13 *Practice Guide: Civil Procedure Before Trial*, §8:318. Here, plaintiff suggests,
14 as she did at the conference of counsel, that the court allow her to send a form
15 letter to Care Entrée members, which allows them to contact plaintiff's counsel
16 only if they want to. If they do not, plaintiff will not contact them further. A
17 proposed form letter is attached as Exhibit 1.

18 State law governs privilege claims in a federal action based on diversity
19 of citizenship. Fed. R. Evid. 501; *Oakes v. Halvorsen Marine Ltd.*, 179 F.R.D.
20 281, 284 (C.D. Cal. 1998). Under California law, the right of privacy is not
21 absolute and yields to discovery in many circumstances. *Olympic Club v.*
22 *Superior Court*, 229 Cal.App.3d at 364; *Ragge v. MCA/Universal Studios*, 165
23 F.R.D. at 604-05.

24 In *Olympic Club*, a city alleged a club was violating the Unruh Civil
25 Rights Act (Cal. Civ. Code §51 et seq.) by discriminating based on race. *Id.* at
26 360-61. The city sought to discover the names and addresses of 41 applicants
27 who were rejected for membership and the club refused, asserting the privacy
28 rights of the applicants. *Id.* at 361. The Court of Appeal allowed the discovery,

1 but required that the applicants be given prior notice and an opportunity to
2 object to the disclosure. *Id.*

3 The court balanced the applicants’ right of associational privacy with the
4 city’s need to investigate racial bias. *Id.* at 361-62. Although the court found
5 that the “right to apply for membership without governmental scrutiny is a
6 natural adjunct to the right of associational privacy,” and that government
7 access to applicant lists could “easily threaten associational freedom,” it
8 allowed the city to obtain this information to investigate whether there had been
9 “a pattern of racial bias.” *Id.* The court also found it important that the Unruh
10 Act specifically empowered the city attorney to bring an action for “injunctive
11 and other appropriate relief in the name of the People of the State of
12 California.” *Id.* at 362-63.

13 Here, too, plaintiffs may obtain injunctive and other equitable relief.
14 Bus. & Prof. Code §17203. Plaintiff is seeking only to identify those people
15 who have signed up with Care Entrée over the last four years; she is not
16 invading any of their associational rights. Moreover, plaintiff is not seeking
17 any medical or other personal information about these individuals. She simply
18 wants to contact them to see if they have experienced unfair business practices
19 by Care Entrée. The slight intrusion of receiving a letter is greatly outweighed
20 by the benefits of having a consumer’s problems with Care Entrée redressed.
21 Receiving a letter about this case is no different than being notified of a class
22 action and is less intrusive than, e.g., receiving an unwanted solicitation for a
23 credit card. Plaintiff should be allowed to contact current and former Care
24 Entrée members to see if they want to discuss Care Entrée’s business practices.

24 **3. Statute of Limitations**

25 Plaintiffs seek information going back four years from the date this
26 action was filed because that is the statute of limitations for an unfair business
27 practices action. Bus. & Prof. Code §17208.

1 **4. Other Boilerplate Objections**

2 Defendants have not pursued any of their boilerplate objections. Since
3 the burden is on the party opposing the motion to justify its objections (*Rogers*
4 *v. Tri-State Materials Corp.*, 51 F.R.D. 234, 247 (1970)), these objections
5 should be rejected.

6 **Defendant’s Contentions**

7 As discussed in Defendant’s introduction, the standard of proof for
8 claims under the UCL is whether the Care Entrée program as a whole is *likely*
9 *to mislead members of the public* – not whether individual members were
10 actually misled. *Prata*, 91 Cal.App.4th at 1143. Under this standard, proof of
11 individual harm is irrelevant. *Id.* at 1146 (emphasis added).

12 Plaintiffs assert that it is reversible error to prevent them from
13 “presenting evidence from other victims.” However, the cases they cite for this
14 proposition – *Cisneros* and *Hangarter* – do not so hold. Rather, these cases
15 stand for the proposition that a plaintiff may not be prevented from introducing
16 evidence regarding “similar business practices” not directly related to the UCL
17 plaintiff’s injury. Plaintiffs’ conclusion that “similar business practices” is
18 synonymous with *other members’ injuries* alters the standard of proof required
19 in UCL actions and emasculates the *Prata* decision. A more reasonable and
20 consistent reading of *Cisneros*, *Hangarter*, and *Prata* would hold that because
21 an action under the UCL can be prosecuted by anyone, regardless of whether
22 they were injured, an action under the UCL can challenge the defendant’s
23 business practices without introducing evidence that any individual was actually
24 injured by any one practice. Because it does not assist a UCL plaintiff in
25 proving his case, evidence of individual injury is irrelevant.

26 Furthermore, information about individual nonparty Care Entrée
27 members is protected by those members’ privacy rights. The United States
28 Constitution protects “the individual interest in avoiding disclosure of personal
matters.” *Whalen v. Roe*, 429 U.S. 589, 599 (1977); *see also Conant v.*

1 *McCaffrey*, 1998 WL 164946 (N.D. Cal.) (discussing the privacy rights of
2 nonparties with respect to medical information). Absent a showing that the
3 information sought is relevant, Defendants are not willing to abrogate the
4 individual interests of their members by divulging their identities to Plaintiffs.

5 Plaintiffs admit that they are pursuing this interrogatory in hopes of
6 obtaining just such irrelevant, private information. At the heart of Plaintiffs'
7 argument is the misguided notion that individual Care Entrée members are
8 better able to provide information about Care Entrée's business practices than
9 its officers and corporate documents. Because it has no basis in reason,
10 Plaintiffs' attempted invasion of the privacy interests of nonparty Care Entrée
11 members must not be condoned by this Court.

12 **Interrogatory No. 4**

13 IDENTIFY each individual and entity that engaged in the marketing of
14 the CARE ENTRÉE HEALTH SERVICES PROGRAM⁴ in California from
15 August 13, 1999 to the present.

16 **Defendant's Response to Interrogatory No. 4**

17 In addition to the General Objections set forth above and incorporated
18 herein by this reference, Precis objects to this interrogatory because it has not
19 completed its (a) investigation of the facts relating to this case, (b) discovery in
20 this action, or (c) preparation for trial. Precis also objects to this interrogatory
21 to the extent it seeks information protected from disclosure by the attorney-
22 client or joint-defense privilege, or the work-product doctrine. Precis further
23 objects to this interrogatory because it is irrelevant, overly broad, unduly
24 burdensome, oppressive and not reasonably calculated to lead to the discovery
25 of admissible evidence to the extent that it (1) seeks information related to any

26 ⁴ CARE ENTRÉE HEALTH SERVICES PROGRAM means the discount
27 membership program marketed by Care Entrée that purports to offer consumers
28 discounts on health care services after membership enrollment into the program
and payment of membership dues.

1 claims accruing before the applicable statute of limitations period, (2) seeks
2 information that is irrelevant to the Zermeno's claim, and (3) seeks information
3 that is protected by the privacy rights of third parties.

4 **Plaintiff's Contentions**

5 Plaintiff's discussion of the relevance, right to privacy, statute of
6 limitations, and boilerplate objection issues regarding Interrogatory No. 3 apply
7 here as well. Moreover, discovery of a party's relevant employees is proper.
8 *West Pico Furniture Co. of Los Angeles v. Superior Court*, 56 Cal.2d 407, 416
9 (allowing discovery of names and addresses of all defendant's employees who
10 participated in various transactions between the parties).

11 **Defendant's Contentions**

12 As discussed in the preliminary statement, Plaintiff's insistence that
13 Defendant further respond to this interrogatory cannot be supported. The Care
14 Entrée program is marketed by independent, individual Care Entrée members
15 who are not Defendants' employees. Additionally, because the Care Entrée
16 program is marketed and sold by independent Care Entrée members, there is no
17 difference between members, marketers and sellers of the Care Entrée program
18 for purposes of these interrogatories. Defendants' discussion of irrelevancy and
19 privacy concerns as set forth in their introductory statement and in their
20 response to Interrogatory No. 3 are applicable here.

21 **Interrogatory No. 5**

22 IDENTIFY each individual and entity that engaged in the sale of
23 memberships in the CARE ENTRÉE HEALTH SERVICES PROGRAM in
24 California from August 13, 1999 to the present.

25 **Defendant's Response to Interrogatory No. 5**

26 In addition to the General Objections set forth above and incorporated herein by
27 this reference, Precis objects to this interrogatory because it has not completed
28 its (a) preparation for trial. Precis also objects to this interrogatory to the extent
it seeks information protected from disclosure by the attorney-client or joint-

1 defense privilege, or the work-product doctrine. Precis further objects to this
2 interrogatory because it is irrelevant, overly broad, unduly burdensome,
3 oppressive and not reasonably calculated to lead to the discovery of admissible
4 evidence to the extent that it (1) seeks information related to any claims
5 accruing before the applicable statute of limitations period, (2) seeks
6 information that is irrelevant to the Zermenos' claim, and (3) seeks information
7 that is protected by the privacy rights of third parties.

8 **Plaintiff's Contentions**

9 Plaintiff's discussion of the relevance, right to privacy, statute of
10 limitations, and boilerplate objection issues regarding Interrogatory No. 3 apply
11 here as well. Moreover, discovery of a party's relevant employees is proper.
12 *West Pico Furniture Co. of Los Angeles v. Superior Court*, 56 Cal.2d 407, 416
13 (allowing discovery of names and addresses of all defendant's employees who
14 participated in various transactions between the parties).

15 **Defendant's Contentions**

16 As discussed in the preliminary statement, Plaintiff's insistence that
17 Defendant further respond to this interrogatory cannot be supported. The Care
18 Entrée program is marketed by independent, individual Care Entrée members
19 who are not Defendants' employees. Defendants' discussion of irrelevancy and
20 privacy concerns as set forth in their introductory statement and in their
21 response to Interrogatory No. 3 are applicable here.

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Date:

Neighborhood Legal Services
of Los Angeles County

David Pallack
Attorneys for Plaintiffs

Date:

Mayer, Brown, Rowe & Maw, LLP

Francisco Ochoa
Attorneys for Defendants

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DECLARATION OF FRANCISCO OCHOA

I, Francisco Ochoa, declare:

1. I am an attorney licensed to practice before all state courts of California and this District Court and am employed by Mayer, Brown, Rowe & Maw LLP, counsel for Defendants Precis, Inc. and The Capella Group, Inc. I have personal knowledge of the matters set forth herein, and if called as a witness I could and would competently testify thereto. I make this declaration in support of Defendants’ Opposition to Plaintiffs’ Motion to Compel Answers to Interrogatories.

2. On April 15, 2004, counsel for the Zermenos and Defendants Precis, Inc. and the Capella Group, Inc. met in an attempt to resolve the disputed interrogatories.

3. At the meeting, counsel for the Zermenos indicated that the reason they are pursuing the information sought in these interrogatories is to assist them in contacting other Care Entrée members to determine if other members suffered the same injuries as the Zermenos. Additionally, Plaintiffs’ counsel suggested that Defendants’ concerns might be allayed by an agreement that Plaintiffs would send letters to the other Care Entrée members, rather than – I suppose – calling them. Defendants did not agree to such an arrangement, and the parties were unable to settle the matter.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this ___ day of May 2004 at Los Angeles, California.

Francisco Ochoa