

1 Alejandra Cedillo, Cal. Bar No. 192034
2 Sonal Ambegaokar, Cal. Bar No. 210783
3 David Pallack, Cal. Bar No. 90083
4 Neighborhood Legal Services
5 of Los Angeles County, Inc.
6 9354 Telstar Avenue, El Monte, CA 91731
7 Telephone: (626) 307-3648; Fax: (626) 307-3650

8 Attorneys for Plaintiffs MANUELA and JUAN A. ZERMENO

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)**
(Consolidated with Case No. 03-6997
SJO (MANx) Dec. 9, 2003)

23 **PLAINTIFFS' STATEMENT OF**
24 **UNCONTROVERTED FACTS**
25 **AND CONCLUSIONS OF LAW;**
26 **EVIDENCE IN SUPPORT**

27 Date: Aug. 9, 2004

28 Time: 10:00 a.m.

Place: Courtroom 1600

Hon. S. James Otero

Trial date: Nov. 9, 2004

Complaint Filed Aug. 28, 2003

Action Removed Sept. 26, 2004

1 3. In exchange for the monthly membership fees, defendants refer
2 members to health care providers and health care product sellers that defendants
3 represent will charge Care Entrée members discounted rates for health care
4 services and health care goods.

5
6 **Evidence:** Care Entrée Overview, PRE 2026, 2028, 2031, 2032; Henkels
7 depo at 20:19-23:8, 29:20-24; Care Entrée CD (Care Entrée “provides access to
8 some of the best medical providers in the industry, at a savings generally ranging
9 from 15% to 50% and more!”) (CD Transcript at 1); Member Video (“You will
10 receive savings of up to 80%, but on average, 20-50%”) (Member Video
11 Transcript at 1).

12
13 4. Defendants enter into contracts with networks of health care
14 providers in which the networks, on behalf of the providers, agree to provide
15 health care services to Care Entrée members at discounted rates.

16
17 **Evidence:** Defendant Precis, Inc.’s Responses to Plaintiff Juan A.
18 Zermeno’s First Set of Interrogatories, interrogatory no. 1 (attached hereto as
19 “Def. Int. Resp.”); Henkels depo at 15:14-22, 20:19-23:8, 29:20-24.

20
21 5. Defendants enter into contracts with sellers of health care goods
22 such as prescription and non-prescription medications, eye glasses, contact
23 lenses, lens and eye solutions, hearing aids, and hearing aid batteries to provide
24 these products to Care Entrée members at discounted rates.

25
26 **Evidence:** Care Entrée Overview, PRE 2028, 2031; Henkels depo at
27 28:24-29:10, 29:20-24.

28

1 6. Health care providers sell services and products to Care Entrée
2 members at discounted rates at least in part because defendants refer members to
3 participating providers and represent the members will pay the full discounted
4 bills at the time services are rendered or the products are provided.

5
6 **Evidence:** Care Entrée CD (“[W]e improve the medical provider’s cash
7 flow by steering patients to them who pay at the time of service.”) (CD
8 Transcript at 3).

9
10 7. Care Entrée provides several discounted health plans to consumers,
11 the “Total Care Program,” for \$69.95 per month per family, the “Essential Care
12 Program,” for \$54.95 per month per family, the “Choice Card Program,” for
13 \$24.95 per month per family, the “Dental Plus Program,” for \$19.95 per month
14 per family, and the “Prescription Plus Program,” for \$9.95 per month per family.

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16 **Evidence:** Care Entrée Overview, PRE 2028; Henkels depo at 19:17-
17 20:18.

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19 8. The Total Care Program provides members with, among other
20 things, referrals to discount-providing hospitals, physicians, dental care
21 providers, and “alternative care” providers such as chiropractors. It also
22 provides members with discounts on prescription medications, eye glasses,
23 contact lenses, lens and eye solutions, and hearing aids and batteries.

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25 **Evidence:** Care Entrée Overview, PRE 2028.
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1 9. The Essential Care Program provides members with, among other
2 things, referrals to discount-providing physicians, dental care providers, and
3 “alternative care” providers such as chiropractors. It also provides members
4 with discounts on prescription medications, eye glasses, contact lenses, lens and
5 eye solutions, and hearing aids and batteries.

6
7 **Evidence:** Care Entrée Overview, PRE 2028.
8

9 10. The Choice Card Program provides members with, among other
10 things, referrals for discounts on prescription medications, eye glasses, contact
11 lenses, lens and eye solutions, hearing aids and batteries, and dental care.

12
13 **Evidence:** Care Entrée Overview, PRE 2028.
14

15 11. The Dental Plus Program provides members with, among other
16 things, referrals for discounts on prescription medications, eye glasses, contact
17 lenses, lens and eye solutions, hearing aids and batteries, and dental care.

18
19 **Evidence:** Care Entrée Overview, PRE 2028.
20

21 12. The Prescription Plus Program provides members with referrals for
22 discounts on prescription medications, eye glasses, contact lenses, lens and eye
23 solutions, and hearing aids and batteries.

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25 **Evidence:** Care Entrée Overview, PRE 2028.
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1 13. To access discounted in-patient hospital services Care Entrée
2 members are required to call Care Entrée employees to discuss the member’s
3 hospital needs and the member’s ability to pay and method of payment. The
4 Care Entrée employee then recommends a specific hospital for the member,
5 provided the member ensures in advance that he or she can pay for the hospital
6 services, generally through an escrow account.

7
8 **Evidence:** Henkels depo at 23:10-25:1, 31:6-9; Care Entrée Overview,
9 PRE 2026, 2028, 2032, 0097-0099, 113.

10
11 14. Defendants tell Care Entrée members to call Care Entrée before
12 using outpatient hospital services so Care Entrée employees can recommend a
13 particular hospital for them.

14
15 **Evidence:** Care Entrée CD (members should call Care Entrée before
16 using outpatient hospital services so Care Entrée “can assist them in making an
17 informed choice.”) (CD Transcript at 12).

18
19 15. Defendants generally provide members with referrals by giving
20 them a list of participating health care providers and health product sellers in
21 the member’s geographic area and through information over the internet.
22 Members also call Care Entrée employees to get current or additional
23 information about the providers and sellers.

24
25 **Evidence:** Henkels depo at 30:19-31:5; Care Entrée Overview, PRE
26 2026, 0108.

1 16. The Care Entrée discount health care referral program does not
2 comply with the requirements of California’s discount buying organization
3 statutes, Cal. Civil Code §§1812.100-1812.129, in particular, the bonding
4 requirements of Civil Code §§1812.103-1812.105, the disclosure requirements
5 of Civil Code §1812.106, and the contract requirements of Civil Code
6 §§1812.107-1812.118.

7
8 **Evidence:** Henkels depo at 33:11-34:11; Joint Stipulation for Motion to
9 Compel Answers to Interrogatories (filed May 27, 2004) at 4 (“Furthermore,
10 Defendants are willing to stipulate that they have not complied with all of the
11 requirements of [Cal. Civil Code] §§ 1812.100 *et seq.* because Defendants do
12 not believe that the Care Entrée program is a discount buying club.”).

13
14 Date:

Neighborhood Legal Services
of Los Angeles County

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17 _____
David Pallack
18 Attorneys for Plaintiffs

1 **CONCLUSIONS OF LAW**

2 1. Through the Care Entrée discount health care referral program
3 defendants, for profit, refer or recommend individuals to physicians, hospitals,
4 health-related facilities, and dispensaries for medical care and treatment of
5 ailments and physical conditions.

6 2. The Care Entrée discount health care referral program violates Cal.
7 Health and Safety Code §445 and may not lawfully operate in California.

8 3. Plaintiffs have a private right of action under Cal. Health and
9 Safety Code §445 to enforce it.

10 4. Plaintiffs may enforce Cal. Health and Safety Code §445 as
11 members of the general public under Cal. Business and Professions Code
12 §17200.

13 5. The Care Entrée discount health care referral program is a
14 “discount buying organization” as defined by Cal. Civil Code §1812.101(a) in
15 that it is an organization which, for monthly membership fees, provides or
16 purports to provide its members with the ability to purchase health-related
17 goods and services at discount prices. The goods include prescription and non-
18 prescription medications, eye glasses, contact lenses, lens and eye solutions,
19 hearing aids, and hearing aid batteries. The services include those provided by
20 hospitals, physicians, dental care providers, and “alternative care” providers
21 such as chiropractors.

22 6. The Care Entrée discount health care referral program does not
23 meet any statutory exceptions to being a “discount buying organization” under
24 Cal. Civil Code §1812.101(a).

25 7. The Care Entrée discount health care referral program does not
26 comply with the requirements of California’s discount buying organization
27 statutes, Cal. Civil Code §§1812.100-1812.129, in particular, the bonding
28 requirements of Civil Code §§1812.103-1812.105, the disclosure requirements

1 of Civil Code §1812.106, and the contract requirements of Civil Code
2 §§1812.107-1812.118.

3 8. As a result of Conclusions of Law 5, 6 and 7, all of Care Entrée's
4 current contracts with members in California and all contracts entered within
5 four years of the date this action was filed with members in California are
6 voidable at the option of the current or former members and those members are
7 entitled to a return of all moneys paid to defendants, treble damages and other
8 statutory penalties, and attorney's fees under Civil Code §1812.126.

9 9. Plaintiffs have a right to enforce Cal. Civil Code §§1812.100-
10 1812.129 as aggrieved individuals under those statutes and members of the
11 general public under Cal. Business and Professions Code §17200.

12
13 Date:

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16 S. James Otero
17 United States District Judge
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DECLARATION OF DAVID PALLACK

I, David Pallack, declare:

1. I am an attorney licensed to practice before all state courts of California and this District Court and am employed by Neighborhood Legal Services of Los Angeles County, counsel for plaintiffs Manuela and Juan A. Zermeno.

2. I have personal knowledge of the matters set forth herein. If called as a witness I could and would competently testify thereto. I make this declaration in support of plaintiffs’ Motions for Summary Judgment, Partial Summary Judgment, and Permanent Injunction.

3. Attached as “Care Entrée Overview” are copies of documents defendants produced in discovery entitled “Program Overview”, “quality, affordable healthcare for you, your family and business”, “About Care Entrée . . .”, and “Care Entrée program overview”, labeled PRE 0097-0108, 0113, 2024-2038.

4. Lodged herewith is a videotape defendants produced in discovery entitled “Member Video,” labeled PRE 2161. Attached hereto as “Member Video Transcript” is a transcript of that video prepared by my secretary.

5. Lodged herewith is a CD produced by defendants in discovery entitled “MEDICAL BREAKTHROUGH IN SAVING YOU MONEY,” labeled PRE 0331. Attached hereto as “CD Transcript” is a transcript of that CD prepared by my secretary.

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 July 2004 at Pacoima, California.

David Pallack