

No. \_\_\_\_\_

STATE OF TEXAS,	§	IN THE DISTRICT COURT OF
Plaintiff,	§	
	§	
V.	§	
	§	
THE CAPELLA GROUP, INC.,	§	
D/B/A CARE ENTRÉE;	§	
EQUAL ACCESS HEALTH, INC.,	§	TRAVIS COUNTY, T E X A S
D/B/A HEALTH BENEFITS OF	§	
AMERICA, E A H, EA HEALTH, EQUAL	§	
HEALTH, EQUAL HEALTH.COM,	§	
H B A & ASSOCIATES, HEALTH CARE	§	
FOR THE ENTIRE FAMILY,	§	
Defendants.	§	JUDICIAL DISTRICT

**PLAINTIFF'S ORIGINAL PETITION**

**TO THE HONORABLE JUDGE OF SAID COURT:**

Plaintiff, STATE OF TEXAS, acting by and through the Attorney General of Texas, Greg Abbott, complains of THE CAPELLA GROUP, INC., D/B/A CARE ENTRÉE, EQUAL ACCESS HEALTH, INC., D/B/A HEALTH BENEFITS OF AMERICA, E A H, EA HEALTH, EQUAL HEALTH, EQUAL HEALTH.COM, H B A & ASSOCIATES, HEALTH CARE FOR THE ENTIRE FAMILY, Defendants, or "CARE ENTRÉE," and for cause of action would respectfully show as follows:

**DISCOVERY CONTROL PLAN**

1. The discovery in this case is intended to be conducted under Level 2 pursuant to TEX. R. CIV. P. 190.2(b)(3); 190.3(a).

**JURISDICTION**

2. This action is brought by Attorney General Greg Abbott, through his Consumer Protection and Public Health Division, in the name of the State of Texas and in the public interest

under the authority granted him by § 17.47 of the Texas Deceptive Trade Practices-Consumer Protection Act, TEX. BUS. & COM. CODE ANN. § 17.41 *et seq.* (Vernon 2002 and Supp. 2004) (“DTPA”) upon the ground that Defendants have engaged in false, deceptive and misleading acts and practices in the course of trade and commerce as defined in, and declared unlawful by, §§ 17.46(a) and (b) of the DTPA. Additionally, Defendants have violated the Texas Telemarketing Disclosure and Privacy Act (“TTDPA”) by sending facsimile solicitations that do not comply with notice provisions of the Act. TEX. BUS. & COM. CODE ANN. § 44.151 (Vernon Supp. 2003).

### **NATURE OF DEFENDANTS’ OPERATIONS**

3. Care Entrée advertises and sells what it claims are discount health plans to consumers in Texas, including in Travis County, and throughout the United States. Care Entrée advertises and sells through websites, unsolicited facsimile transmissions, unsolicited electronic mail transmissions, print advertisements, and telemarketing. Care Entrée advertises as “Health care for the Entire Family,” saving consumers up to 80%, and more, on all health care needs, including doctors, hospitals, prescriptions, vision and dental care. Care Entrée claims all pre-existing conditions are accepted, there are no limitations on usage, no age restrictions, no forms to fill out, no co-pays, and consumers can not be singled out for rate increases or cancellations. Care Entrée advertises that it will act as the “patient’s advocate,” to help consumers lower prices on all their health care needs. Its websites allow consumers to search lists of health care providers who have agreed, according to Care Entrée, to provide members with health care services at rates substantially reduced from the providers’ normal rates. Care Entrée represents that consumers who show their membership cards to providers will receive discounted rates of up to 80% or more off the providers’ normal rates. Care Entrée advertises examples of savings such as a hospital stay and surgery which it claims was

originally priced at \$11,199.00, but the consumer paid only \$1,250.00, or saved 89%. Other examples include a doctor's visit which was allegedly discounted 49%, a dental exam allegedly discounted 76%, and a prescription allegedly discounted 60%.

## **DEFENDANTS**

4. Defendant The Capella Group, Inc., doing business as Care Entrée, is a Texas corporation. Defendant The Capella Group, Inc. can be served with process by serving its registered agent, Corporation Service Company d/b/a CSC-Lawyers Incorporating Service Company, 701 Brazos Street, Suite 1050, Austin, Texas 78701.

5. Defendant Equal Access Health, Inc. ("Equal Access") is a Nevada corporation. Equal Access was formerly known as Novinger, Binkley, Speers, Leyva and Associates, Inc., a Nevada corporation. Equal Access does business in Texas and Travis County under numerous assumed names, including Health Benefits of America. Equal Access can be served process by serving its registered agent, Brady Speers, 8 Pinnacle Court, Mansfield, Texas 76063.

## **VENUE**

6. Venue of this suit lies in Travis County, Texas for the following reasons:

- A. Under TEX. CIV. PRAC. & REM. CODE §15.001, venue is proper because all or a substantial part of the events or omissions giving rise to the causes of action alleged herein occurred in Travis County, Texas; and
- B. Under the DTPA §17.47(b), venue is proper because Defendants have done business in Travis County, Texas.

## **PUBLIC INTEREST**

7. Because Plaintiff STATE OF TEXAS has reason to believe that Defendants have engaged in, and will continue to engage in the unlawful practices set forth below, Plaintiff STATE OF TEXAS has reason to believe that Defendants have caused, and will cause adverse effects to legitimate business enterprise which conducts its trade and commerce in a lawful manner in this State. Therefore, the Consumer Protection and Public Health Division of the Office of the Attorney General of Texas believes and is of the opinion that these proceedings are in the public interest and at least seven days prior to instituting this action contacted Defendants to inform them in general of the alleged unlawful conduct.

## **TRADE AND COMMERCE**

8. Defendants are engaged in trade and commerce as that term is defined by § 17.45(6) of the DTPA.

## **ACTS OF AGENTS**

9. Whenever in this Petition it is alleged that Defendants did any act, it is meant that:

- A. Defendants performed or participated in the act; or
- B. Defendants' officers, agents, or employees performed or participated in the act on behalf of and under the authority of the Defendants.

## **STATEMENT OF FACTS**

10. ***Selling the Program to Consumers:*** Care Entrée advertises its health care program through websites, facsimile transmissions, electronic mail transmissions, print advertisements, and telemarketing throughout Texas and the rest of the United States. These advertisements are directed

to consumers who have no health insurance, or are having trouble affording the health insurance they currently have. These advertisements claim that:

- A. Care Entrée’s health care program provides health care for the entire family for a single monthly fee;
- B. Care Entrée’s health care program covers all health care needs, including doctors, hospitals, dental care, vision care, prescriptions, hearing aids, alternative health care, chiropractic care, and more;
- C. Care Entrée’s health care program provides all the above listed health care at rates substantially discounted, as much as 80% or more, from the rates charged consumers who do not participate in Care Entrée’s health care program;
- D. Care Entrée has agreements with health care providers, and/or networks of health care providers, wherein the providers agree to furnish health care services to members of Care Entrée’s health care program at rates substantially discounted from the providers’ usual rates for services; and
- E. Care Entrée’s health care program members will receive health care services from providers who have agreements with Care Entrée at substantially discounted rates by presenting their membership cards to the providers when they receive health care services.

11. Care Entrée advertises with print advertisements, unsolicited faxes, and unsolicited e-mail (“spam e-mail”). Consumers complain these print advertisements have prices which Care Entrée refused to honor. Care Entrée’s unsolicited faxes do not include the name of the person or

entity making the facsimile transmission, nor do the faxes include the street address of the person's place of business. Many of the faxes do not disclose the health care program is not insurance. The faxes instruct consumers to call an 800 number to sign up at a special rate "good through Friday only!" Care Entrée's spam e-mails include representations of discounts of up to 89% off health care services, and statements that this health care program is similar to a PPO, and can be used as a cost-effective replacement for health insurance. The spam e-mails instruct the recipient to sign up for the program via the internet or by calling an 800 number. Consumers who call are told the program will cover all of the consumer's health care needs, including hospitalization and surgery, for one low fee per month. In addition to the monthly fee for the program, consumers are charged a one-time enrollment fee ranging from \$20.00 to \$199.00. Consumers are told the plan is "satisfaction guaranteed," with a refund if the consumer is not satisfied with the plan within a certain period of time. Care Entrée signs up consumers for the plan after the consumers provide a checking account or credit card number for billing. Care Entrée tells consumers who wish to be billed monthly that the company only accepts credit card charges or automatic debits from bank accounts in order to keep costs low. Care Entrée tells consumers they will receive a membership packet in the mail in 10 to 14 days.

12. According to consumer complaints, only after receiving the membership packet does Care Entrée disclose to the consumers that they have to wait 30 days for savings on hospitalization, and there is a \$1000/day advance payment required for hospitalization. The membership packet includes membership cards, a list of the most frequently used providers in the consumer's local area, and instructions on how to use the plan. Additional terms and conditions that are disclosed only after the consumer has committed to purchasing the product include:

- A. The health care program is not insurance;
- B. The consumer must pay the total cost of services in full at the time of service;
- C. The enrollment fee paid by the consumer, ranging from \$20.00 to \$199.00, is not refundable under any circumstances;
- D. The participating providers are subject to change at any time and without notice;
- E. Care Entrée is not responsible if a provider refuses to provide services at the discounted rate;
- F. Use of the plan for cosmetic surgery is extremely limited, and only available to consumers who have been members in good standing for a period of a year or more;
- G. Consumers covered by Medicare will not receive additional discounts on health care services which are already billed at the discounted Medicare rate; and
- H. At the end of the disclosures, consumers are told they must cancel the health care program in writing (no address is given).

13. ***The Consumers' Experience***

- A. **Facts of the Plan:** Consumers complaint Care Entrée led them to believe that they have purchased a health insurance plan, and they are surprised to discover that what they receive is what Care Entrée calls a “health discount program.” Consumers complain they purchased the program to cover situations in which emergency hospitalization or surgery was required, and

are surprised to learn there is a 30-day waiting period and \$1000.00 per day deposit for hospitalization. Upon learning these facts, many consumers decide to immediately cancel the program.

- B. **Cancellation Run-around:** When consumers call Care Entrée to cancel, they complain they are unable to get through on the “customer service” telephone number. They connect with a voice-mailbox, which instructs them to leave a message, which will be returned within 24 hours. Consumers complain they are never called back. Consumers who signed up for the program through Equal Access Health, Inc., or one of its d/b/a’s, report difficulty in reaching a live customer service representative. These consumers call The Capella Group, Inc., which is the company listed on their credit card bills or bank account statements. Consumers are told by Capella Group representatives that even though Equal Access fails to respond to calls, they must contact Equal Access, Inc. to cancel. Consumers who reach a live person at either Capella Group or Equal Access Health are told their cancellation request has been processed and a refund should appear on the consumer’s next credit card bill or bank account statement. However, when the next bill or statement arrives, the consumer discovers not a refund, but rather another charge or debit. When the consumer again complains, Care Entrée informs the consumer the program cannot be cancelled by phone, due to it being a “health plan.” Only after many phone calls does Care Entrée tell consumers the cancellation must be in writing, and that the consumer will not receive a refund, since the

consumer had “health coverage” during that period. Even when the consumer cancels in writing, Care Entrée often continues to charge the consumer for the plan, sometimes for months at a time. This occurs even when the consumers send the cancellation requests by certified mail, return receipt request, and received signed green cards in return. The charges often do not stop until the Better Business Bureau or the Texas Office of the Attorney General intercedes on the consumer’s behalf. In some cases, the Better Business Bureau was assured by Care Entrée that a refund had been issued, only to learn from the consumer months later that the promised refund was not received.

14. ***Problems with the Program:*** Consumers who try to use the program also experience problems. Consumers complain that Care Entrée’s representatives told the consumers that certain health care providers accepted the Care Entrée program. However, when the consumers present the Care Entrée card to the providers, the providers claim that they do not participate in the program. The following is illustrative of consumers’ experiences in this area: A consumer who purchased the Care Entrée program needed surgery for prostate cancer. He called Care Entrée to find out if the hospital his doctor recommended was a provider that accepted the program. Care Entrée told him that particular hospital did not accept the program, but Baylor All Saints was a participating provider. The consumer made arrangements for the surgery at Baylor All Saints. After undergoing precertification with the hospital, he was told by the hospital, on the day of his scheduled cancer surgery, that Baylor All Saints did not accept the Care Entrée program. Not wishing to postpone his cancer surgery, the consumer hoped to clear up the misunderstanding with Care Entrée’s help after

the procedure. Upon receiving a bill for \$16,753.21, the consumer contacted Care Entrée for their help in repricing the bill to reflect the expected “substantial discount.” Care Entrée “discovered” that Baylor All Saints had opted out of accepting the Care Entrée card over a year prior to the consumer’s surgery. Despite the fact that Care Entrée had directed the consumer to this hospital, they took no further steps to assist the consumer, who is currently paying off this bill. Other consumers have complained of incurring substantial charges for health care services after being reassured over the phone by Care Entrée that certain providers accepted the Care Entrée program. These consumers would not have incurred such charges had they known that these providers did not offer substantial discounts to Care Entrée members.

15. Consumers have also encountered problems with health care providers who have agreed to accept the Care Entrée program. Many providers are signed up to accept the Care Entrée program without their knowledge by a network to which they belong. The providers are familiar with the situation in which the network agrees on the provider’s behalf to accept various insurance plans. Therefore, when they receive a patient with a Care Entrée card with the network’s logo on it, the provider expects the Care Entrée program to work like an insurance plan, in which case the provider sends the bill to the network for repricing and reimbursement. The providers have no idea what discount they should apply to the patient’s bill, nor do they realize that they are expected to collect the entire fee from the patient at the time of service. Care Entrée does not contact any of the providers to inform them of how the Care Entrée program works.

16. Consumers who have their medical bills repriced with the Care Entrée discount applied complain that the discount is not what was represented to them when Care Entrée sold them the program. Consumers expecting to receive health care services at 20-80% off the normal rates

discovered that the fees for services were the same after the Care Entrée “discount” was applied to their bill, or that the discounts were negligible, and did not approach an amount that would justify the monthly fee for the Care Entrée membership.

17. Many consumers complain of finding charges for Care Entrée’s program on their credit cards even though they had not signed up for Care Entrée membership. Care Entrée claims the consumers have signed up for the program, and in many instances Care Entrée refuses to refund months of fees consumers claim were unauthorized. In some instances Care Entrée has issued refunds, without explaining why the consumers’ credit cards were charged without the consumers’ authorizations.

18. ***The Reality of The Program:*** Care Entrée advertises and sells a discount health program. Care Entrée represents that its members will have access to substantial discounts that have been pre-negotiated with the health care providers. In fact, Care Entrée has only contracted with networks of health care providers. These contracts allow Care Entrée members to access the health care providers who have not declined to accept the program at the network fee schedule. Care Entrée does not contract directly with health care providers, or in fact contact them in any way. Care Entrée has no knowledge of what the individual health care providers would charge patients who pay cash for their services at the time of receiving the service, and therefore has no knowledge of the amount, or even the existence, of any discount. In some cases, the health care provider’s fee schedule which would be utilized for “cash” patients, is the same as, or even less than, the network fee schedule. In those cases, Care Entrée’s health care program is of no benefit to the consumer. While the consumers have been told they are purchasing a “health care plan” that supposedly gives them access to health care at substantially discounted rates, in fact what they have been sold is access to a list of providers

who may or may not agree to provide the consumers with health care services, at rates that may or may not be less than the health care providers' normal rates.

19. Care Entrée make claims regarding discounts of as much as 89% on health care services, but despite repeated requests from the Better Business Bureau, it has failed to substantiate those claims.

### **VIOLATIONS OF DTPA**

20. Plaintiff, the State of Texas, incorporates and adopts by reference the allegations contained in each and every preceding paragraph of this petition.

21. Care Entrée, as alleged and detailed above, has in the course of trade and commerce engaged in false, misleading and deceptive acts and practices declared unlawful in § 17.46(a) and (b) of the DTPA. Such acts include:

- A. Engaging in false, misleading or deceptive acts or practices in violation of § 17.46(a) of the DTPA;
- B. Passing off goods or services as those of another in violation of § 17.46(b)(1) of the DTPA;
- C. Causing confusion or misunderstanding as to the source, sponsorship, approval, or certification of goods or services in violation of § 17.46(b)(2) of the DTPA;
- D. Causing confusion or misunderstanding as to affiliation, connection, or association with, or certification by, another in violation of § 17.46(b)(3) of the DTPA;

- E. Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not have or that a person has a sponsorship, approval, status, affiliation, or connection which he does not in violation of § 17.46(b)(5) of the DTPA;
- F. Advertising goods or services with intent not to sell them as advertised in violation of § 17.46(b)(9);
- G. Making false or misleading statements of fact concerning the reasons for, existence of, or amount of price reductions in violation of § 17.46(b)(11) of the DTPA;
- H. Representing that an agreement confers or involves rights, remedies, or obligations which it does not have or involve, or which are prohibited by law in violation of § 17.46(b)(12) of the DTPA; and
- I. Failing to disclose information concerning goods or services which was known at the time of the transaction if such failure to disclose such information was intended to induce the consumer into a transaction which the consumer would not have entered into had the information been disclosed in violation of § 17.46(b)(24) of the DTPA.

#### **VIOLATIONS OF THE TTDPA**

22. Plaintiff, the State of Texas, incorporates and adopts by reference the allegations contained in each and every preceding paragraph of this petition.

23. By sending out facsimile solicitations that did not include the correct and complete name of the person making the facsimile solicitations and the street address of the location of the person's place of business, Care Entrée has violated § 44.151(1) of the TTDPA.

### **PRAYER**

24. By reason of the acts and practices described herein above, Care Entrée has violated and will continue to violate the laws as herein alleged unless enjoined by this Honorable Court.

25. WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that Care Entrée be cited according to law to appear and answer herein; that after due notice and hearing a temporary injunction be issued; and that upon final hearing a permanent injunction be issued, restraining and enjoining Care Entrée, its officers, agents, servants, employees and attorneys and any other person in active concert or participation with Care Entrée, from engaging in the following acts or practices:

- A. Failing to disclose in a clear and conspicuous manner in all oral and written communications to consumers that Care Entrée's program is not insurance.
- B. Using terms of art from insurance in oral and written communications to consumers regarding Care Entrée's program, including but not limited to, the following terms:
  - i. Co-pay;
  - ii. Benefit(s);
  - iii. Pre-existing conditions; and
  - iv. Coverage.
- C. Representing to consumers in any oral or written communications that the program offers discount health care, access to discount health care, ranges of

discounts or savings on health care, or access to ranges of discounts or savings on health care, unless Care Entrée has a factual basis for those representations.

- D. Representing that health care providers will accept the Care Entrée's program unless Care Entrée has, at some point in the prior twelve months, confirmed in writing with the health care provider the following information:
- i. The provider's current name, address, and telephone number;
  - ii. That the provider is accepting new patients; and
  - iii. That the provider has agreed to accept Care Entrée's members and bill those members for health care services according to a certain fee schedule.
- E. Representing to consumers that there are health care providers who participate in the program in the consumer's local area unless Care Entrée has made a list of all providers reasonably available for inspection by consumers prior to any purchase.
- F. Representing to consumers that members of Care Entrée's program can access hospital providers except under the following conditions:
- i. Each time an oral or written representation regarding access to hospital providers is made, Care Entrée clearly and conspicuously discloses all material conditions, restrictions, and costs associated with access to the hospital providers, including but not limited to:
    - a. Waiting periods;

- b. Pre-certification and/or pre-qualification requirements; and
  - c. Deposit or pre-payment requirements.
- ii. There are no conditions, restrictions, or costs associated with accessing hospital providers that would prevent Care Entrée’s average member from accessing hospital providers.

G. Assessing or collecting payment of any kind from consumers unless and until Care Entrée is in receipt of a signed and dated contract to purchase Care Entrée’s program from the consumer.

- i. In order to be in compliance with this term, the signed and dated contract to purchase Care Entrée’s program must include:
  - a. A fair and accurate description of Care Entrée’s program; and
  - b. Clear and conspicuous disclosures of any material terms, conditions, and/or restrictions regarding Care Entrée’s program.

H. Assessing a “one-time,” “enrollment,” “administrative,” or “sign-up” fee unless and until the following conditions are met:

- i. Any such fee, and its material terms and conditions, are clearly and conspicuously disclosed to consumers before assessing the fee. Such disclosures shall include, but not be limited to, the following:
  - a. The amount of the fee;
  - b. The purpose of the fee; and
  - c. Whether or not the fee is refundable.

ii. Any such fee must be a nominal amount, related to costs incurred by Care Entrée in enrolling consumers in its program.

I. Marketing or offering to consumers “free trials” of Care Entrée’s program, unless the following conditions are met:

- i. No charges are assessed, and no monies are collected from consumers during the “free trial” period; and
- ii. Consumers are required to affirmatively agree to purchase the program by signing and dating a contract for purchase which meets the requirements of paragraph 26, section G, above, prior to charges being assessed or payments being collected from the consumer.

J. Representing that Care Entrée offers a “money-back” or “satisfaction” guarantee unless all monies paid by consumers to Care Entrée, including but not limited to, enrollment fees and monthly fees, are refundable under the guarantee.

K. Requiring consumers to cancel the program in writing unless Care Entrée clearly and conspicuously discloses in all written and oral communications to consumers, that written cancellations are required. Such disclosures shall include:

- i. The address to which written cancellations should be sent; and
- ii. The fax number to which written cancellations should be sent, if facsimile notification is an accepted means of cancellation.

- L. Failing to cancel the program for a consumer if the consumer has manifested an intent to cancel.
- M. Charging a consumer's credit card, drafting or debiting a consumer's bank account, or billing the consumer after the effective date of cancellation, unless:
  - i. Stopping a scheduled charge, draft, debit, or bill is not practicable; and
  - ii. Care Entrée removes the charge, credits back the bank account, or sends a revised bill within 3 days of the effective date of cancellation.
  - iii. The effective date of cancellation shall be the date Care Entrée receives the cancellation in the case of oral or facsimile cancellations, and the date the cancellation is postmarked in the case of cancellations sent by mail.
- N. Failing to disclose to a consumer who has attempted to cancel Care Entrée's program that the consumer's method of cancellation was not effective.
- O. Representing that Care Entrée is offering the program at a special price for a limited time unless:
  - i. The "special price" represents a price which is lower than the customary fee for the program;
  - ii. The "special price" is available for a limited time;
  - iii. The expiration date of the "special price" offer is clearly and conspicuously disclosed; and

iv. All material terms, conditions, and restrictions regarding the offer are clearly and conspicuously disclosed in all communications of the offer to consumers.

P. Using customer testimonials, unless:

- i. All representations regarding Care Entrée's program have a factual basis;
- ii. The full name of the person making the testimonial is included in all communications of the testimonial to consumers;
- iii. All material relationships, whether current or past, between Care Entrée and the person making the testimonial are clearly and conspicuously disclosed in all oral and written communications of the testimonial to consumers; and
- iv. All representations in the testimonial regarding price reductions, savings, and/or discounts received on health care services are in reference to price reductions, savings, and/or discounts received solely through the use of Care Entrée's network access program, and not the result of combining Care Entrée's program with a high deductible health insurance program, or any other program.

Q. Sending facsimile solicitations which do not include:

- i. The correct and complete name of the person making the facsimile solicitation and the street address of the location of the person's place of business; and

ii. A toll-free or local exchange accessible telephone number of the person that:

- a. Is answered in the order in which the calls are received by an individual capable of responding to inquiries from recipients of facsimile solicitations at all times after 9 a.m. and before 5 p.m. on each day except Saturday and Sunday; or
- b. Automatically and immediately deletes the specified telephone number of the recipient.

26. Plaintiff further requests that upon final hearing this Court award such relief as the Court finds necessary to redress injury to consumers including, but not limited to, restitution of monies paid by consumers; and further order each Defendant to pay to the State of Texas:

- A. Restitution of monies paid by consumers;
- B. Disgorgement of any ill-gotten gains;
- C. Civil penalties of up to \$20,000.00 per violation of the DTPA;
- D. Civil penalties of up to \$1000.00 per violation of the TTDPA;
- E. Pre-judgment and post-judgment interest on all awards of restitution, damages, or civil penalties, as provided by law; and
- F. All costs of Court, costs of investigation, and reasonable attorney's fees pursuant to TEX. GOVT. CODE ANN. § 402.006(c).

27. Plaintiff further prays for such other relief to which Plaintiff may be justly entitled.

Respectfully submitted,

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First Assistant Attorney General

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