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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

ELIZABETH HIROMOTO, Plaintiff and Appellant, v. UNIVERSITY OF SOUTHERN CALIFORNIA SCHOOL OF DENTISTRY et al., Defendants and Respondents.	B257881 (Los Angeles County Super. Ct. No. BC512867)

APPEAL from a judgment of the Superior Court of Los Angeles County, Elizabeth R. Feffer, Judge. Affirmed.

Law Office of John Drooyan and John Drooyan for Plaintiff and Appellant.

Cole Pedroza, Kenneth R. Pedroza and E. Todd Chayet; Hurrell Cantrall, Lisa Martinelli and Melinda Lee Cantrall for Defendants and Respondents.

I. INTRODUCTION

Plaintiff, Elizabeth Hiromoto, appeals from a summary judgment entered against her. Plaintiff filed a first amended complaint against defendants, the University of Southern California (the university) and the Ostrow School of Dentistry of the University of Southern California (the dental school). Plaintiff alleges six causes of action relating in whole or in part to the dental school's alleged failure to provide treatment as outlined in its treatment plans for her.

Defendants moved for summary judgment, arguing that plaintiff's causes of action were time-barred under the statute of limitations of Code of Civil Procedure section 340.5. Defendants also asserted plaintiff failed to raise a triable issue of material fact for each required element of her causes of action. Plaintiff also moved for summary judgment as to all her causes of action. The trial court granted defendants' summary judgment motion on all grounds and denied plaintiff's motion.

Plaintiff seeks a reversal of the summary judgment entered in defendants' favor. Plaintiff also requests we treat her summary judgment motion as a writ petition. We conclude there is no merit to any of plaintiff's causes of action because of the statute of limitations.

II. BACKGROUND

A. First Amended Complaint

Plaintiff filed her original complaint against defendants on July 1, 2013. Defendants demurred and moved to strike portions of plaintiff's complaint. The trial court partially sustained the demurrer, granted the strike motion in part and gave plaintiff leave to amend. On December 23, 2013, plaintiff filed her first amended complaint.

Plaintiff alleges the following in her first amended complaint. Plaintiff was a dental school patient. She began receiving treatment at the dental school in 1998. In

spring of 2004, unidentified dental school employees and plaintiff discussed her complaints about her dental condition. On June 23, 2004, Dr. Li-wen Lai prepared a treatment plan for restorative dental care (the 2004 treatment plan). The 2004 treatment plan included: teeth extractions; computed tomography scan; possible sinus lift and bone graft; removal of fixed partial denture bridge; teeth implant placements; temporary prosthetic teeth; orthodontic treatment by teeth moving; definitive crowns; implanted supported fixed partial denture bridge; palatal veneer; amalgam restoration; and a night guard. Plaintiff paid an advance for the restorative care treatment plan and began her treatment. Several dental school dentists performed dental implants on November 16, 2005. Plaintiff experienced pain following the implants.

On March 2, 2009, plaintiff experienced continued pain in her upper left canine tooth. Plaintiff was then examined by Dr. Woo Kim of the dental school. Dr. Kim informed plaintiff that the tooth needed to be removed. Plaintiff went to the dental school for the extraction on April 10, 2009. She specifically stated she did not want it done unless an implant was provided. Upon being told no implant would be provided, she informed two dental school dentists to stop the procedure. In an October 5, 2009 letter from Dr. Sigmund Abelson, an assistant dean, the dental school later agreed to provide an implant for the tooth. On November 18, 2009, the extraction occurred. However, plaintiff did not receive the implant the dental school agreed to provide at no cost to her. Instead, plaintiff's tooth was replaced with a provisional cantilevered unit connected to an implant bridge.

In late 2008, Dr. Fadi Kattar, a dental school dentist, determined that a root canal performed by Dr. Darlene Lee in 2005 was incomplete. Dr. Lee was a dental school dentist. The incomplete work performed on plaintiff was an additional source of pain. Plaintiff sought treatment for it at the dental school but was refused. According to the first amended complaint, Dr. Abelson wrote to plaintiff on April 6, 2010, and promised to provide a no-cost implant for tooth No. 11. The dental school never provided the implant.

Plaintiff received an updated treatment letter dated June 1, 2010, from Dr. John Chen. The letter is also signed by Dr. Cho, the dental school's Co-Director of the Advanced Education in Prosthetics Department. Plaintiff signed the letter. Plaintiff alleges her 2004 and 2010 treatment plans were contracts. Plaintiff was also expected to sign and return a general release for the dental school with the 2010 treatment letter. Plaintiff refused. She received no treatment from the dental school in 2010 or 2011.

The dental school sent her updated treatment letters on December 5, 2011, and March 20, 2012. These letters omitted treatments that were previously listed in the June 1, 2010 treatment letter. Plaintiff wrote a letter to the dental school on May 29, 2012, requesting the treatment provided for in the treatment letter dated June 1, 2010. A dental school employee, Marina Jimenez, wrote letters to plaintiff on June 14 and September 25, 2012. The letters advised plaintiff the dental school would no longer provide her with dental care.

Plaintiff consulted with Oral Construx Dentists in late 2012. Dr. Aria Davodi of Oral Construx Dentists wrote plaintiff a letter on November 9, 2012, explaining several problems and unresolved issues in her mouth. Dr. Davodi informed plaintiff that she had a composite veneer on tooth No. 7, though she had paid for a palatal veneer. On March 28, 2013, plaintiff's counsel wrote a notice to the dental school alleging several causes of action. The dental school responded that it would not accept plaintiff's settlement offer.

Plaintiff alleges causes of action for: contract breach; fraud; negligent misrepresentation; negligence; violation of Business and Professions Code section 17200; and violation of the Consumer Legal Remedies Act. Plaintiff's first amended complaint seeks special and general damages, restitution, costs of suit and, on the fraud and the Consumer Legal Remedies Act causes of action, punitive damages.

B. Defendants' Summary Judgment Motion

On February 28, 2014, defendants moved for summary judgment. Defendants asserted the merits of plaintiff's causes of action. Defendants argued: based on the

undisputed facts, all of plaintiff's causes of action arise from professional negligence; professional negligence causes of action are subject to the Code of Civil Procedure section 340.5 statute of limitations; plaintiff knew or should have known of her injuries by late 2010; plaintiff filed her original complaint on July 1, 2013; and, as a result, all of plaintiff's causes of action are time-barred under Code of Civil Procedure section 340.5. Defendants raised the statute of limitations as an affirmative defense. Defendants also contended plaintiff failed to properly raise her claims for punitive damages. Defendants' only argument in their summary judgment motion concerned the statute of limitations.

Plaintiff argued all her claims are not subject to the Code of Civil Procedure section 340.5 medical negligence statute of limitations. She contended the statute of limitations began to run on June 14, 2012. The June 14, 2012 letter was sent by Ms. Jimenez to plaintiff. In that letter, plaintiff was advised that the dental school can no longer treat her. Plaintiff contended she can establish all the elements for all her causes of action.

C. Plaintiff's Summary Judgment Motion

On April 18, 2014, plaintiff filed her own summary judgment motion. Plaintiff filed her amended summary judgment motion on April 21, 2014. Plaintiff argued she was entitled to judgment as a matter of law as to all six causes of action. In opposition, defendants asserted that plaintiff failed to meet her burden of proof under Code of Civil Procedure section 437c, subdivision (p)(1). Defendants also contended plaintiff's causes of action are time-barred and she failed to establish each required element as to all her causes of action.

D. Undisputed Facts

Plaintiff was initially a patient at the dental school in 1995. But she did not complete the prescribed treatment. After several years, plaintiff reapplied to the dental

school for further treatment on March 16, 2004. On June 23, 2004, plaintiff received a letter from the dental school regarding the 2004 treatment plan. The 2004 treatment plan offered plaintiff several options to address her dental problems. Plaintiff chose to receive implants. The 2004 treatment plan had the following disclaimer: "You must understand that implants are not a fail proof system. You . . . should know that there are many possible problems that can occur at any time whenever such an object is placed within the human body." The 2004 treatment plan noted, "Naturally with the human body, it is impossible to make guarantees." Plaintiff acknowledged understanding the letter's contents and disclaimers and signed it. In 2004, plaintiff paid $18,660 towards her prosthodontic treatment fee. The total treatment fee was $26,400. Plaintiff made no further payments.

Beginning in 2005, plaintiff frequently complained about the treatment she received from the dental school. Plaintiff complained in November 2005 that Dr. Kevin Lee had told her he could not do implant work on teeth Nos. 30 and 31 because of a nerve. Plaintiff alleged that she informed Dr. Lee Wan-Li about pain in her implants at teeth Nos. 30, 31, 12, and 14. Her concerns were not addressed.

In 2006, plaintiff received a new assigned dentist, Dr. Helia Hooshangi. Plaintiff met with Dr. Hooshangi. In their meetings, plaintiff explained over the next 3 years she suffered pain in teeth Nos. 3-4, 11-12 and 30-31. Plaintiff did not notify the dental school of this issue in 2007 or 2008. On January 9, 2009, plaintiff e-mailed Dr. George Cho, a dental school co-director, a list of complaints about Dr. Hooshangi.

During the 2007-2008 treatment period, plaintiff complained of a generalized, diffused sensation in the upper right quadrant of her mouth, namely tooth No. 5. Dr. Kattar told plaintiff that a root canal could be done but he could not guarantee it would resolve her symptoms.

On April 10, 2009, Dr. Cho informed plaintiff she could not have an implant on tooth No. 11. Plaintiff had requested she receive an implant on tooth No. 11. Rather, Dr. Cho indicated plaintiff would receive another type of restoration. Plaintiff refused to have the extraction done. On May 6, 2009, Dr. Cho met with plaintiff. Also present was

Veronica Parra, the dental school's advanced practice specialty manager. In that conversation, plaintiff was told she would have to pay for an implant on tooth No. 11 if she wanted it. On July 2, 2009, plaintiff wrote Dr. Abelson, the dental school dean, concerning her various complaints about her dental treatment.

On June 1, 2010, plaintiff received a new treatment plan (2010 treatment plan) from the dental school. The dental school agreed to assume responsibility for any restorations it performed for a period of one-year. The dental school also agreed to make any additional modifications or adjustments without charge. The 2010 treatment plan also contained similar disclaimers as the 2004 treatment plan. Plaintiff acknowledged understanding the contents and disclaimers by signing the document. The 2010 treatment plan did not proceed because plaintiff refused to sign a general release of claims. The general release even applied to future potential liability on the part of the dental school. Plaintiff received the release form on June 22, 2010. The written 2010 treatment plan executed by Dr. Cho, Dr. Chen and plaintiff makes no reference to a requirement that a general release be executed by her. Plaintiff testified concerning a telephone conversation with an unidentified university employee. The university employee relayed a message from Ms. Jimenez. Plaintiff described Ms. Jimenez's message, "The message that this woman told me was that . . . unless I signed a general release, there would be no treatment given." (The 2004 treatment plan was not contingent on plaintiff executing a general release.) After returning the 2010 treatment plan, plaintiff never contacted the dental school. Nor did anybody from the dental school contact her.

On November 19, 2010, the Dental Board of California (the board) informed the dental school that plaintiff had lodged an administrative complaint regarding treatment dating back to 2005. The board noted that plaintiff complained the dental school: "Disregarded her complaints about pain in the left maxillary canine in 2007 and when an exam was performed in 2009, it was found that it had external root resorption and needed to be extracted. She claims that if she would have been examined initially, the tooth could have been saved. It was also found that a root canal performed in 2005 was incomplete and was another source of her continuing pain the in upper right area of her

head. It was redone in 2009 but she is still experiencing pain. The area between the two implanted teeth is also painful, and had been told that their positions were moved due to the location of an existing nerve. She later found out that it was because the block graft was unstable and came loose and the implants were placed anyways. She also claims that the treatment plan was amended without her consent." The board informed plaintiff on February 9, 2011, that there was no evidence the dental school had violated the Dental Practice Act in its treatment of her. On February 18, 2011, Dr. Abelson, on behalf of the dental school, wrote to plaintiff and stated it will no longer be providing dental care for her. But plaintiff wanted to continue as a dental school patient.

In late 2011, plaintiff received another treatment letter dated December 5, 2011. On May 12, 2012, plaintiff wrote to the dental school that the 2011 treatment plan did not include issues that plaintiff had discussed with her prior dentists. Plaintiff later wrote a letter on May 29, 2012, again requesting that the dental school include treatments provided for in the 2010 treatment plan.

On June 11, 2012, plaintiff telephoned the dental school dean's office to complain about her treatment. Plaintiff's telephone call was received by Rena Pacheco. The dental school's patient complaint form describes plaintiff's conversation with Ms. Pacheco as follows: "[Plaintiff] called the Office of the Dean on June 11, 2012, requesting a meeting with Dean Sadan to discuss her experience as a patient of the [dental school]. [Plaintiff] stated she was being seen by a student dentist who has graduated, and was reassigned to a new student dentist. She stated she received a new treatment plan that did not include many items that her original treatment plan with her previous dental student contained, and was asked to sign a Past, Present and Future release form. Plaintiff stated she was advised by a friend not to sign the form as it is unlawful. [Plaintiff] states she has been unable to continue her treatment and stated she believes the problem originated when she confronted Veronica Parra regarding her unsigned treatment plan. [Plaintiff] stated she has been in contact with [Ms.] Jimenez and Socorro Gutierrez regarding this matter. [Plaintiff] stated she also sent an e[-]mail to Dr. Abelson on this matter which has gone unanswered."

On June 14, 2012, Ms. Jimenez, the dental school's quality assurance director, wrote a responsive letter to plaintiff. Ms. Jimenez wrote in part: "Please be advised that after a thorough review of your treatment and history at the [dental school], we have concluded that we are unable to continue providing you dental care and treatment. We are concerned that the lack of confidence you have expressed regarding your prescribed and recommended treatment plan and in the treating doctors as well, has created a strained doctor-patient relationship which is not conducive to providing good patient care."

Plaintiff received no treatment from the dental school in 2010, 2011 or 2012, other than a dental cleaning on October 26, 2011. Plaintiff later wrote a complaint to a United States Congress member about the dental school. Plaintiff also filed another complaint against the dental school with the board. On October 30, 2012, the board again found no evidence the dental school had violated the Dental Practice Act in its treatment of plaintiff.

On September 25, 2012, Ms. Jimenez wrote another letter to plaintiff. In that letter, plaintiff was advised that the dental school had concluded all possible avenues of resolution related to her care. Plaintiff later wrote to others at the university to resume her dental treatment, but was unsuccessful.

In late 2012, plaintiff consulted with dentists from Oral Construx Dentists. On November 9, 2012, Dr. Davodi of Oral Construx Dentists informed plaintiff of several concerns, including significant bone loss around the lower back teeth implants. Dr. Davodi also recommended the composite veneers on her upper right canine and lateral incisor be replaced. On March 28, 2013, plaintiff's counsel, John N. Drooyan, mailed a 30-day notice of violations under the Consumer Legal Remedies Act to the dental school.

E. Trial Court's Order

On July 3, 2014, the trial court heard both summary judgment motions. The trial court denied plaintiff's motion because it found clearly triable issues of fact were present

as to the causes of action. The trial court concluded the gravamen of plaintiff's complaint concerned professional negligence. The court concluded plaintiff's causes of action were time-barred by the statute of limitations. The trial court also found plaintiff failed to raise a triable issue of material fact as to all of her causes of action. Plaintiff appealed the summary judgment.

III. DISCUSSION

A. Defendants' Summary Judgment Motion

1. Summary judgment legal standards

In *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 850-851, our Supreme Court described a party's burden on summary judgment motions as follows: "[F]rom commencement to conclusion, the party moving for summary judgment bears the burden of persuasion that there is no triable issue of material fact and that he is entitled to judgment as a matter of law. That is because of the general principle that a party who seeks a court's action in his favor bears the burden of persuasion thereon. [Citation.] There is a triable issue of material fact if, and only if, the evidence would allow a reasonable trier of fact to find the underlying fact in favor of the party opposing the motion in accordance with the applicable standard of proof. . . . [¶] [T]he party moving for summary judgment bears an initial burden of production to make a prima facie showing of the nonexistence of any triable issue of material fact; if he carries his burden of production, he causes a shift, and the opposing party is then subjected to a burden of production of his own to make a prima facie showing of the existence of a triable issue of material fact. . . . A prima facie showing is one that is sufficient to support the position of the party in question. [Citation.]" (Fns. omitted; see *Kids' Universe v. In2Labs* (2002) 95 Cal.App.4th 870, 877-878.)

We review an order granting summary judgment de novo. (*Coral Construction, Inc. v. City and County of San Francisco* (2010) 50 Cal.4th 315, 336; *Johnson v. City of Loma Linda* (2000) 24 Cal.4th 61, 65, 67-68.) The trial court's stated reasons for granting summary judgment are not binding because we review its ruling not its rationale. (*Coral Construction, Inc. v. City and County of San Francisco, supra,* 50 Cal.4th at p. 336; *Continental Ins. Co. v. Columbus Line, Inc.* (2003) 107 Cal.App.4th 1190, 1196.) In addition, a summary judgment motion is directed to the issues framed by the pleadings. (*Turner v. Anheuser-Busch, Inc.* (1994) 7 Cal.4th 1238, 1252; *Ann M. v. Pacific Plaza Shopping Center* (1993) 6 Cal.4th 666, 673, overruled on a different point in *Reid v. Google, Inc.* (2010) 50 Cal.4th 512, 527, fn. 5.) These are the only issues a motion for summary judgment must address. (*Conroy v. Regents of University of California* (2009) 45 Cal.4th 1244, 1249-1250; *Goehring v. Chapman University* (2004) 121 Cal.App.4th 353, 364.)

2. Code of Civil Procedure Section 340.5

The Legislature passed the Medical Injury Compensation Reform Act in 1975 in response to rapidly increasing premiums for medical malpractice insurance. (See *Preferred Risk Mutual Ins. Co. v. Reiswig* (1999) 21 Cal.4th 208, 214; *Delaney v. Baker* (1999) 20 Cal.4th 23, 33-34.) Code of Civil Procedure section 340.5 was amended as part of the Medical Injury Compensation Reform Act. (See *Belton v. Bowers Ambulance Service* (1999) 20 Cal.4th 928, 930; *Alcott Rehabilitation Hospital v. Superior Court* (2001) 93 Cal.App.4th 94, 99.)

Code of Civil Procedure section 340.5 provides in part, "In an action for injury or death against a health care provider based upon such person's alleged professional negligence, the time for the commencement of action shall be three years after the date of injury or one year after the plaintiff discovers, or through the use of reasonable diligence should have discovered, the injury, whichever occurs first." Code of Civil Procedure section 340.5 defines "professional negligence" as follows: "'Professional negligence'

means a negligent act or omission to act by a health care provider in the rendering of professional services, which act or omission is the proximate cause of a personal injury or wrongful death, provided that such services are within the scope of services for which the provider is licensed and which are not within any restriction imposed by the licensing agency or licensed hospital."

Our Supreme Court has held: "To determine the statute of limitations which applies to a cause of action it is necessary to identify the nature of the cause of action, i.e., the 'gravamen' of the cause of action. [Citations.] '[T]he nature of the right sued upon and not the form of action nor the relief demanded determines the applicability of the statute of limitations under our code.' [Citation.]" (*Hensler v. City of Glendale* (1994) 8 Cal.4th 1, 22-23.) The Court of Appeal has found: "Courts have broadly interpreted 'in the rendering of professional services,' concluding that a negligent act that occurs in the rendering of services for which the health care provider is licensed is professional negligence." (*So v. Shin* (2013) 212 Cal.App.4th 652, 663; *Canister v. Emergency Ambulance Service* (2008) 160 Cal.App.4th 388, 404; *Murillo v. Good Samaritan Hospital* (1979) 99 Cal.App.3d 50, 57, disapproved of on other grounds in *Flowers v. Torrance Memorial Hospital Medical Center* (1994) 8 Cal.4th 992, 999-1000.) Our Supreme Court explained when the medical malpractice, i.e. discovery, statute of limitations begins to run: "The general rule for defining the accrual of a cause of action sets the date as the time 'when, under the substantive law, the wrongful act is done,' or the wrongful result occurs, and the consequent 'liability arises . . . .' [Citation.] In other words, it sets the date as the time when the cause of action is complete with all of its elements [citations] - the elements being generically referred to by sets of terms such as 'wrongdoing' or 'wrongful conduct,' 'cause' or 'causation,' and 'harm' or 'injury' [citations]. [¶] An exception to the general rule for defining the accrual of a cause of action - indeed, the 'most important' one - is the discovery rule. [Citation.] It may be expressed by the Legislature or implied by the courts. [Citation.] It postpones accrual of a cause of action until the plaintiff discovers, or has reason to discover, the cause of action. [Citations.]" (*Norgart v. Upjohn Co.* (1999) 21 Cal.4th 383, 397; *Unruh-Haxton*

v. Regents of University of Cal. (2008) 162 Cal.App.4th 343, 358.) Our Supreme Court has held: "[W]e do not take a hypertechnical approach to the application of the discovery rule. Rather than examining whether the plaintiffs suspect facts supporting each specific legal element of a particular cause of action, we look to whether the plaintiffs have reason to at least suspect that a type of wrongdoing has injured them." (*Fox v. Ethicon Endo-Surgery, Inc.* (2005) 35 Cal.4th 797, 807; *Unruh-Haxton v. Regents of University of Cal.*, *supra,* 162 Cal.App.4th at p. 359.)

3. Negligence

Plaintiff alleges in her negligence cause of action: the dental school owed her a duty of care regarding the 2004 and 2010 treatment plans with the skill of other dentists in good standing in the same locale; the dental school refused to provide plaintiff with the treatment described in the 2004 and 2010 treatment plans when it abandoned its treatment of her; the negligent treatment resulted in pain and suffering. This is professional negligence as defined under Code of Civil Procedure section 340.5. Plaintiff complained of the treatment provided by the dental school, a health care provider, in the rendering of professional services. Plaintiff knew or should have known of her negligence cause of action by the time she filed her November 2010 board complaint about her problems with the dental school. As noted, plaintiff complained to the board that the dental school had changed its treatment plan for her without consent. Plaintiff also complained about the treatment she had received. Under Code of Civil Procedure section 340.5, plaintiff had one year from the discovery of her injury to file her complaint. Thus, plaintiff's negligence cause of action is time-barred. The trial court correctly ruled that plaintiff's negligence cause of action had no merit.

4. Contract breach

Plaintiff alleges in her contract breach cause of action: she entered into a contract on September 15, 2004, for the dental school to provide her with restorative dental treatment; she agreed to incorporate the 2010 treatment plan with the 2004 treatment plan; she paid $18,660 for treatment in 2004; plaintiff received limited treatment from 2004 through 2009; and the dental school refused to continue treating her. This cause of action's gravamen is professional negligence. Here, plaintiff complained that defendant failed to provide the treatment it had contractually promised to provide. As noted, in plaintiff's negligence cause of action she alleges the dental school breached its duty of care by failing to provide the treatment listed in the 2004 and 2010 treatment plans. The gravamen of plaintiff's contract breach and professional negligence causes of action are the same. Thus, her contract breach cause of action is subject to Code of Civil Procedure section 340.5 and is barred as discussed above. The trial court correctly ruled that plaintiff's contract breach claim has no merit.

5. Fraud

Plaintiffs fraud cause of action alleges: she paid for services described in the 2004 and 2010 treatment plans; she did not receive the treatment included in the treatment plans; the dental school ignored her numerous complaints about its failure to treat her under the 2004 and 2010 treatment plans; the dental school represented to her she would receive the treatment but then later ceased treating her; and the dental school made this false representation to induce her to pay $18,660. The gravamen of her fraud cause of action is that the dental school failed to provide her treatment under the 2004 and 2010 treatment plans. Thus, the fraud cause of action is subject to the Code of Civil Procedure section 340.5 statute of limitations. The trial court correctly ruled that the fraud claim had no merit.

6. Negligent misrepresentation

In plaintiff's negligent misrepresentation cause of action contains the same allegations as her fraud claim. Plaintiff is alleging the dental school failed to provide treatment pursuant to the 2004 and 2010 treatment plans. The gravamen of this cause of action is professional negligence. The trial court correctly ruled plaintiff's negligent misrepresentation claim has no merit because it is time-barred by Code of Civil Procedure section 340.5 the statute of limitations.

7. Business and Professions Code Section 17200

The Business and Professions Code section 17200 cause of action alleges: the dental school made misrepresentations that it would provide treatment to plaintiff and other members of the public; these misrepresentations were made to induce the public and plaintiff to seek treatment at the dental school; the dental school failed to provide members of the public with treatment; and such misrepresentations constituted fraud, contract breach and negligence. These are the specific allegations made in plaintiff's unfair competition cause of action. No doubt, plaintiff's first amended complaint incorporates by reference paragraphs which discuss other alleged misconduct which potentially could serve as the basis of an unfair competition claim. The unfair competition cause of action refers to "acts and practices" alleged elsewhere in the first amended complaint. However, the fifth cause of action only alleges a violation of Business and Professions Code section 17200 in the three specific respects identified in the first sentence of this paragraph. An unfair competition cause of action need not be pled with the specificity applicable in the fraud context. (*Quelimane Co. v. Stewart Title Guaranty Co.* (1998) 19 Cal.4th 26, 46-47.) Nonetheless, an unfair competition plaintiff must state with reasonable particularity the facts supporting these statutory claim. (*Khoury v. Maly's of California, Inc.* (1993) 14 Cal.App.4th 612, 618-619; see *Perdue v. Crocker National Bank* (1985) 38 Cal.3d 913, 926-930.) Here, the first amended

complaint Business and Professions Code section 17200 cause of action identifies three specific acts of unfair competition. We limit our analysis to those three specific allegations.

Plaintiff is alleging the dental school failed to provide treatment pursuant to the 2004 and 2010 treatment plans. The gravamen of this cause of action is the failure to provide the requisite care; i.e., professional negligence. The trial court correctly ruled plaintiff's unfair competition claim has no merit because it is time-barred by the Code of Civil Procedure section 340.5 statute of limitations.

8. Consumer Legal Remedies Act

Plaintiff alleges defendants violated the Consumer Legal Remedies Act. (Civil Code, § 1750 et seq.) Plaintiff's first amended complaint alleges the dental school violated: Civil Code section 1770, subdivision (a)(7), which prohibits representing that goods or services are of a particular standard, quality, or grade, if they are of another; Civil Code section 1770, subdivision (a)(14), which prohibits representing that a transaction confers or involves rights, remedies, or obligations which it does not have or involve, or which are prohibited by law; and Civil Code section 1770, subdivision (a)(19), which prohibits inserting an unconscionable provision in a contract.

As to any of plaintiffs' claims which relate to the quality of her treatment, these are matters which are subject to the Code of Civil Procedure section 340.5 statute of limitations and are time-barred. However, the medical malpractice statute of limitations has nothing to do with the demand that plaintiff sign a general release. We assume for purposes of discussion such violates Civil Code section 1770, subdivision (a)(19), which prohibits inserting an unconscionable provision in a contract.

However, even the asserted unconscionable effort to require the signing of a release is barred by the Consumer Legal Remedies Act statute of limitations. The Consumer Legal Remedies Act statute of limitations is three years from when plaintiff discovered the basis of her claim. (Civ. Code, § 1783; see Rylaarsdam, Cal. Practice

Guide: Civil Procedure Before Trial Statutes of Limitations (The Rutter Group 2015) ¶¶ 4:1302-4:1303, p. 4-148.) Plaintiff's first amended complaint only refers to the 2010 demand she signed a general release on June 22, 2010. However, the initial complaint was not filed until July 1, 2013. Plaintiff contends that there was a demand in 2011, a time frame within the three-year statute of limitations, when the demand was repeated. Thus, she argues her Consumer Legal Remedies Act claim was timely filed. However, we agree with defendants that she has failed to plead a demand in 2011 to sign the general release. Hence, because she has not pled anything relating to a 2011 demand to sign a general release, she cannot raise it for the first time in her summary judgment opposition. (*Oakland Raiders v. National Football League* (2005) 131 Cal.App.4th 621, 648-649; *Bostrom v. County of San Bernardino* (1995) 35 Cal.App.4th 1654, 1663.) Plaintiff's claim based upon the June 22, 2010 demand to sign a general release was untimely.

Further, the continuing violation doctrine has no application here. It was not pled in the amended complaint and we need not consider it now. In any event, the only alleged demand to sign the general release occurred outside the statute limitations. We need not reach defendants' other contentions concerning plaintiff's Consumer Legal Remedies Act cause of action.

Here, plaintiff did not allege a series of small harms over a period of time that as an aggregate would constitute an action. Based on the undisputed facts, plaintiff was aware or should have been aware of defendants' alleged wrongful conduct when plaintiff received the general release on June 22, 2010. Her cause of action was actionable at the time she received the general release.

9. Writ petition contention

As to plaintiffs' unsuccessful summary judgment motion, she contends we should treat it as a writ petition. None of the circumstances which permit us to treat a notice of

appeal as a writ petition apply here. (*Morehart v. County of Santa Barbara* (1994) 7 Cal.4th 725, 744-747; *Olson v. Cory* (1984) 35 Cal.3d 390, 401.) We decline to treat this appeal as a writ matter. In any event, plaintiff failed to sustain her burden of proving the amount of her damages and thus the trial court correctly denied her summary judgment motion. (Code Civ. Proc., § 437c, subd. (p)(1).)

IV. DISPOSITION

The summary judgment is affirmed. Defendants, the University of Southern California and the Ostrow School of Dentistry, are awarded their appeal costs from plaintiff, Elizabeth Hiromoto.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

TURNER, P. J.

We concur:

KRIEGLER, J.

KIRSCHNER, J.*

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.