SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. MARY V. ROSADO** **PART** **33M**

Justice

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TRICIA RANCE,

Plaintiff,

- v -

L'OREAL USA, INC.,L'OREAL USA PRODUCTS, INC.,SOFTSHEEN-CARSON LLC,SOFTSHEEN-CARSON (W.I.), LLC,GODREJ SON HOLDINGS, INC.,STRENGTH OF NATURE, LLC

Defendant.

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INDEX NO. 150123/2024

MOTION DATE 02/26/2024

MOTION SEQ. NO. 005

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 005) 26, 27, 28, 29, 36, 40, 41, 42, 43, 44, 46, 62

were read on this motion to/for DISMISS.

Upon the foregoing documents and after oral argument, which took place on January 21, 2025, where Kip Nesmith, Esq and Peter W. Smith, Esq. appeared for Plaintiff Tricia Rance ("Plaintiff"), James R. Bliss, Esq. appeared on behalf of the Defendants L'Oréal USA, Inc., L'Oréal USA Products, Inc. and Softsheen-Carson LLC, Softsheen-Carson (W.I.), LLC (collectively "L'Oréal"), and E. Dean Harris Porter, Esq. appeared on behalf of the Defendants Godrej Son Holdings, Inc., and Strength Of Nature, LLC, (collectively "Strength of Nature") Strength of Nature's motion to dismiss is granted in part and denied in part.

I. Background

This action arises out of Plaintiff's alleged exposure to hair straightening products which allegedly caused uterine cancer. From 1992 to 2015, Plaintiff alleges she used numerous hair relaxer products manufactured and sold by Defendants. In 2021, Plaintiff was diagnosed with uterine cancer. Plaintiff now sues Defendants under numerous theories of liability seeking to

recover damages related to her uterine cancer diagnosis. Strength of Nature responded with the instant pre-answer motion to dismiss. Plaintiff opposes and requests leave to amend or supplement her Complaint should the Court find her Complaint deficient in any regard.[1]

II. Discussion

A. Standard

When reviewing a pre-answer motion to dismiss for failure to state a claim, the Court must give Plaintiff the benefit of all favorable inferences which may be drawn from the pleadings and determine only whether the alleged facts fit within any cognizable legal theory (*Sassi v Mobile Life Support Services, Inc.*, 37 NY3d 236, 239 [2021]. All factual allegations must be accepted as true (*Allianz Underwriters Ins. Co. v Landmark Ins. Co.*, 13 AD3d 172, 174 [1st Dept 2004]). Conclusory allegations or claims consisting of bare legal conclusions with no factual specificity are insufficient to survive a motion to dismiss (*Godfrey v Spano*, 13 NY3d 358, 373 [2009] *Barnes v Hodge*, 118 AD3d 633, 633-634 [1st Dept 2014]). A motion to dismiss for failure to state a claim will be granted if the factual allegations do not allow for an enforceable right of recovery (*Connaughton v Chipotle Mexican Grill, Inc.*, 29 NY3d 137, 142 [2017]).

A defendant who moves to dismiss based on the statute of limitations bears the burden of proving that the time to sue has expired (*Lebedev v Blavatnik*, 144 AD3d 24 [1st Dept 2022]). If there exists an issue of fact as to whether the statute of limitations has run, a motion to dismiss based on untimeliness should be denied (*Stringer v Kim*, 226 AD3d 607, 608 [1st Dept 2024]). For the foregoing reasons, Defendant's motion is granted in part and denied in part.

[1] Plaintiff did not formally cross-move for a motion to amend, therefore the Court need not entertain this relief (*see Fifth Partners LLC v Foley*, 227 AD3d 543 [1st Dept 2024]; *Onofre v 243 Riverside Drive Corp.*, 232 AD3d 443, 443-444 [1st Dept 2024]).

B. Personal Jurisdiction

Strength of Nature's motion to dismiss Plaitniff's Complaint for lack of personal jurisdiction is denied, without prejudice, with leave to renew upon further jurisdictional discovery. A plaintiff bears the ultimate burden of proof on the issue of personal jurisdiction since they are the party seeking to assert it over a defendant. However, courts do not require the plaintiff to make a *prima facie* showing of personal jurisdiction, but only to demonstrate that facts "may exist" to exercise personal jurisdiction over the defendant (*see* CPLR 3211[d]; *American BankNote Corp. v.* Daniele, 45 AD3d 338, 340 [1st Dept 2007]). General jurisdiction over a corporate defendant may be exercised where the corporation is incorporated and maintains its principal place of business (*Aybar v Aybar*, 37 NY3d 274, 289 [2021]). General jurisdiction does not exist over Strength of Nature which is incorporated and maintains its principal place of business in Georgia. Therefore, the Court may only exercise personal jurisdiction over Strength of Nature if specific jurisdiction exists.

Pursuant to CPLR 302(a)(1), a New York Court may exercise personal jurisdiction over a nondomiciliary if the nondomiciliary has purposefully transacted business within the state and there is "a substantial relationship between the transaction and the claim asserted" (*Coast to Coast Energy, Inc. v Gasarch*, 149 AD3d 485 [1st Dept 2017] quoting *Paterno v Laser Spine Ins.*, 24 NY3d 370, 376 [2014]). A court must engage in a two-prong inquiry to determine (1) whether the defendant transacts any business in New York and, if so, (2) whether the cause of action arises from such a business transaction (*Wilson v Danta*, 128 AD3d 176 [1st Dept 2015]). A plaintiff does not need to have been involved in the transaction; rather, a plaintiff need only demonstrate that, considering all the circumstances, there is an articulable nexus or substantial relationship between the business transaction and the claim asserted (*D & R global Selections, S.L. v Bodega*

Olegario Falcon Pineiro, 29 NY3d 292, 298-299; *English v Avon Products, Inc.*, 206 AD3d 404 [1st Dept 2022]).

In opposition to the motion, Plaintiff submits an affidavit stating she lived in New York from 1992 to 2000 and regularly used and purchased Strength of Nature products during that time – specifically in Rosedale, New York and in Brooklyn, New York (NYSCEF Doc. 41). In the motion papers, Strength of Nature did not proffer any reply to Plaintiff's affidavit (NYSCEF Doc. 46). However, at oral argument, Strength of Nature's attorney represented that Strength of Nature was not formed until February 2000 and did not distribute any products in New York prior to that date. Plaintiff's affidavit is silent as to the specific dates she purchased Strength of Nature Products and Strength of Nature has failed to proffer any evidence related to the distribution of its products in New York after February 2000. On this record, the Court cannot definitively rule that it lacks specific jurisdiction over Strength of Nature. Discovery may show Strength of Nature distributed its products in New York in March of 2000 and Plaintiff was exposed to those products. Therefore, this portion motion is denied without prejudice, with leave to renew upon further discovery (*see, e.g. Venegas v Capric Clinic*, 147 AD3d 457, 458 [1st Dept 2017]).

C. Preemption

Strength of Nature's motion to dismiss Plaintiff's fifth through fifteenth causes of action based on express preemption is denied. Defendants argue Plaintiff's claims are expressly preempted by the Food, Drug, and Cosmetic Act ("FDCA"), 21 U.S.C. §301. Express preemption applies only where the plain language of a statute supersedes state law (*Doomes v Best Transit Corp.*, 17 NY3d 594, 601 [2011]). As held by the United States Supreme Court, there is a presumption against pre-emption, and pre-emption clauses are to be narrowly construed (*Cipollone v Liggett Group, Inc.* 505 U.S. 504, 505 [1992]; *see also Galper v JP Morgan Chase Bank, N.A.*,

802 F3d 437, 448 [2d Cir 2015]). The specific language which Strength of Nature argues preempts many of Plaintiff's causes of action is found in 21 U.S.C. § 379s(a). That provision provides:

> "Except as provided in subsection (b), (d), or (e), no State or political subdivision of a State may establish or continue in effect any requirement for labeling or packaging of a cosmetic that is different from or in addition to, or that is otherwise not identical with, a requirement specifically applicable to a particular cosmetic or class of cosmetics under this chapter, the Poison Prevention Packaging Act of 1970 (15 U.S.C. 1471 et seq.), or the Fair Packaging and Labeling Act (15 U.S.C. 1451 et seq.)."

The exception to the preemption clause found at 21 U.S.C. § 379s(d) provides:

> "Nothing in this section shall be construed to modify or otherwise affect any action or the liability of any person under the product liability law of any State."

A holistic review of Plaintiff's Complaint yields allegations that Defendants were negligent for failure to comply with the labelling requirements of 21 U.S.C. §§ 361, 362, and 21 C.F.R. § 740.1(a). Accepting Plaintiff's allegations as true, pursuant to § 361, titled "Adulterated cosmetics," Defendants' products should have been labelled and/or recalled as adulterated. That section specifically states a cosmetic is adulterated "[i]f it bears or contains any poisonous or deleterious substance which may render it injurious to users under the conditions of use prescribed in the labelling thereof, or under such conditions of use as are customary or usual...." (*see* 21 U.S.C. § 361[a]). Moreover, pursuant to 21 U.S.C. 362(a), a cosmetic is misbranded "[i]f its labelling is false or misleading in any particular." And pursuant to 21 C.F.R. § 740.1(a), "[t]he label of a cosmetic product shall bear a warning statement whenever necessary or appropriate to prevent a health hazard that may be associated with the product."

Strength of Nature's preemption argument is misguided in two respects. First, Plaintiff does not seek relief under state law causes of action that would impose a different or additional labeling requirement pursuant to the FDCA. Rather, Plaintiff is alleging state law causes of action based on purported violations of the FDCA's labeling requirement. Specifically, it is alleged that

Defendants' products were marketed as "organic," "natural," "nourishing," and "healthy" even though there was scientific data showing certain ingredients in Defendants' products disrupt women's endocrine systems (NYSCEF Doc. 1 at ¶ 48). These ingredients are alleged to include, but are not limited to, phthalates, parabens, cyclosiloxanes, di-(2-ethlhexyl), octamethylcyclotetrasiloxane, lye, and formaldehyde (*Id.*). Given the presumption against preemption and construing 21 U.S.C. § 379s(a) narrowly and in conjunction with other sections of the FDCA, the Court finds Plaintiff's fifth through fifteenth causes of action are not expressly preempted. Indeed, § 379s(a) does not expressly bar plaintiffs from using common law causes of action to seek damages based on a defendant's alleged failure to comply with the labeling requirements set forth in the FDCA.

Although Strength of Nature relies on the Second Circuit's decision in *Critcher v L'Oreal USA, Inc.*, 959 F.3d 31 (2d. Cir. 2020), the facts of that case are wholly distinguishable from the case at bar. Specifically, the putative class in *Critcher* sued because some purchased cosmetics could not be fully dispensed from cosmetics – causing purchased product to go to waste. The plaintiffs alleged they were "cheated" of the product they bought. They alleged there should have been a disclaimer that not all the cream bought was accessible to the consumer. *Critcher* was not a case involving alleged mislabeling based on the failure to warn about potentially cancer-causing ingredients. The Second Circuit specifically noted that the *Critcher* plaintiffs were not suing based on the effectiveness of the products, as Plaintiff does here. Moreover, the *Critcher* plaintiffs conceded that L'Oréal complied with the FDCA's federal labeling requirements, while here Plaintiff alleges those requirements have been violated. Thus, the Second Circuit's decision in *Critcher* is neither persuasive nor controlling.

The second reason that Strength of Nature's preemption argument is misplaced is because it fails to consider that Plaintiff's causes of action five through fifteen may be categorized as product liability claims, or at the very least, are product liability adjacent, bringing them within the product liability exception contained in 21 U.S.C. § 379s(d). Indeed, it was for this reason that United States District Judge Mary M. Rowland, in ruling on defendants' joint motion to dismiss the plaintiffs' master complaint, found the numerous state law claims were not preempted (*see In re Hair Relaxer Marketing Sales Practices and Prods. Liab. Litig.*, 702 F.Supp.3d 692, 699-700 [ND Ill 2023]). Given the presumption against preemption, construing 21 U.S.C. § 379s(a) narrowly, and to ensure consistency in rulings, this Court adopts Judge Rowland's ruling in the ongoing multidistrict litigation. Therefore, the motion to dismiss based on an express preemption defense is denied.

D. Statute of Limitations

Strength of Nature's motion to dismiss Plaintiff's Complaint pursuant to the statute of limitations is denied without prejudice with leave to renew upon further discovery. Strength of Nature is correct that where a claimed injury results from exposure to a toxic substance, the statute of limitations begins to run upon the "discovery of the manifestations or symptoms of the latent disease that the harmful substance produced" (*Goffredo v City of New York*, 33 AD3d 346. 347 [1st Dept 2008] quoting *Matter of New York County DES Litig.,* 89 NY2d 506, 514 [1997]). There is no "bright-line rule for when symptoms or manifestations of a physical condition are sufficient to trigger CPLR § 214-c" (*In re World Trade Center Lowe Manhattan Disaster Site Litig.*, 758 F.3d 202, 211 [2d Cir 2014]).

Here, Plaintiff alleges she was diagnosed with uterine cancer sometime in January of 2021, and she filed her Complaint in this action on January 4, 2024. The record before the Court is bereft

of any medical records evidencing when Plaintiff began to experience sufficient physical symptoms and manifestations of her uterine cancer. Discovery regarding Plaintiff's medical conditions is needed to flush out unresolved issues of fact regarding the timeline of manifestations of Plaintiff's uterine cancer (*see, e.g. Nelux Holdings International, N.V. v Dweck,* 160 AD3d 520, 521 [1st Dept 2018] [issues of fact precluded dispositive defense based on statute of limitations]).Therefore, the motion to dismiss pursuant to the statute of limitations is denied, without prejudice, with leave to renew upon further discovery.

A. Failure to Warn (First and Third Causes of Action)

Strength of Nature's s motion to dismiss Plaintiff's failure to warn cause of action is denied. Strength of Nature argues the failure to warn claims fail because the Complaint does not identify the defect in Strength of Nature's products, nor does it allege Strength of Nature's knowledge of the defect. This argument is unavailing, as the Complaint lists the products used (*see* NYSCEF Doc. 1 at ¶¶ 2, 24) and alleged the numerous allegedly dangerous ingredients used in Strength of Nature's products which Strength of Nature had a duty to research, test, and warn about (*Id.* at ¶¶ 46-88). Accepting the allegations as true, as this Court must on a pre-answer motion to dismiss, this is sufficient to state a failure to warn claim (*see, e.g. Liriano v Hobart Corp.*, 92 NY2d 232, 237 [1998] [manufacturers have "a duty to warn against latent dangers resulting from foreseeable uses of its product of which it knew or should have known."]). Although Strength of Nature argues that there is insufficient scientific evidence to allege that it knew or should have known about the dangers of certain ingredients, that is an argument appropriate for a motion for summary judgment, after further discovery has taken place and with competing expert affidavits, as opposed to a pre-answer motion to dismiss.

B. Design and Manufacturing Defect (Second and Fourth Causes of Action)

Strength of Nature's motion to dismiss Plaintiff's design defect claim is denied. As long held by the Court of Appeals, a design defect claim arises when a product is "unreasonably dangerous for its intended use" or "whose utility does not outweigh the danger inherent in its introduction into the stream of commerce." (*Voss v. Black & Decker Mfg. Co.*, 59 NY2d 102, 107 [1983]). Plaintiff explicitly alleges that Strength of Nature's hair relaxer products were unreasonably dangerous because they contained toxic ingredients which increase the risk of uterine cancer. Accepting the allegations as true, on a pre-answer motion to dismiss this is sufficient to state a design defect claim.

Strength of Nature's motion to dismiss Plaintiff's manufacturing defect claim is granted. As a preliminary matter, Plaintiff failed to proffer arguments in opposition to the motion to dismiss her manufacturing defect claim and therefore it can be dismissed as abandoned (*Saidin v Negron*, 136 AD3d 458, 459 [1st Dept 2016]). Indeed, the heading of both the second and fourth causes of action purport to be for "Design and/or Manufacturing Defect." However, a cause of action alleging design defect is distinct from a manufacturing defect claim, and a review of the allegations in the second and fourth causes of action clarify that Plaintiff is only alleging causes of action based on design defect. Indeed, to allege a manufacturing defect claim, there must be allegations that there was a mistake or error during the manufacturing process which made a product defective (*Narvaez v Wadsworth*, 58 Misc.3d 12229[A] at 7 [Sup. Ct., Bx Cty, 2018] citing *Fitzpatrick v Currie*, 52 AD3d 1089, 1090 [3d Dept 2008]). Here, there are no allegations that products Plaintiff used were defectively manufactured and caused her injury – rather she alleges that the products were designed defectively by utilizing dangerous ingredients and failing to warn consumers about the dangers of those ingredients. Based on the lack of any particularized opposition and Plaintiff's

failure to distinguish her design defect allegations from her manufacturing defect allegations, Plaintiff' manufacturing defect claims are dismissed.

C. Negligence and Gross Negligence (Fifth Cause of Action)

Strength of Nature's motion to dismiss Plaintiff's negligence and gross negligence claims is denied. Given the CPLR's lenient pleading standard, coupled with Plaintiff's detailed allegations in her 46-page Complaint, she has sufficiently alleged a negligence claim. Plaintiff has also alleged adequately a gross negligence claim, which requires allegations that a defendant's conduct "evinces a reckless disregard for the rights of others or 'smacks' of intentional wrongdoing." (*Colnaghi, U.S.A., Ltd. v. Jewelers Protection Servs., Ltd.,* 81 N.Y.2d 821, 823–24, [1993]). Accepting the allegations as true, marketing products as "healthy" and "nourishing" while utilizing ingredients that dangerously increase the risk of uterine cancer and failing to warn about the dangers of those ingredients despite alleged knowledge of those dangers is sufficient to allege gross negligence.

D. Negligence *Per Se* (Twelfth Cause of Action)

Strength of Nature's motion to dismiss Plaintiff's claims alleging negligence *per se* is denied. New York law holds defendants liable for negligence per se as to violations of the FDCA (*see Winans v Ornua Foods North America Inc.*, 731 F.Supp.3d 422, 431 [EDNY 2024]). Plaintiff's alleged violations of the FDCA based on misbranding and false or misleading labeling has long been held by the Second Circuit to give rise to a negligence *per se* claim (*see Ezagui v Dow Chemical Corp.*, 598 F2d 727, 733 [2d Cir. 1979]; *see also Sita v Danek Medical, Inc.*, 43 F.Supp.2d 245, 262 [EDNY 1999]). Thus, this portion of L'Oréal's motion is denied.

E. Negligent Misrepresentation, Fraud, Fraudulent Concealment, and General Business Law § 349 claims (Sixth through Eighth Causes of Action and Fourteenth Cause of Action)

Strength of Nature's motion to dismiss Plaintiff's claims alleging negligent misrepresentation, fraud, fraudulent concealment, and the General Business Law Claim is granted in part and denied in part. To state a negligent misrepresentation claim, a plaintiff must allege that the defendant was "under a duty to the plaintiff to exercise reasonable care in giving the information, and plaintiff's reliance on the information must be foreseeable." (*Heard v City of New York*, 82 NY2d 66 [1993]). Accepting the allegations as true, Plaintiff adequately alleged negligent misrepresentation by stating that Defendants knew or should have known their products were unsafe yet failed to disclose the dangers to Plaintiff, who relied on Defendants' omissions when she decided to purchase their products (*see also Standish-Parkin v Lorillard Tobacco Co.*, 12 AD3d 301, 302-303 [1st Dept 2004]).

The same analysis holds true for Plaintiff's fraud and fraudulent concealment claims (*see also Rose v American Tobacco Co.*, 3 Misc.3d 1103[A] at 2 [Sup. Ct. NY Co. 2004]). Contrary to Strength of Nature's assertion, CPLR 3016(b)'s heightened pleading standard is not meant to prevent an otherwise valid cause of action in situations where it may be 'impossible to detail the circumstances constituting a fraud'" (*Pludeman v Northern Leasing Systems, Inc.* 10 NY3d 486, 491 [2008] citing *Lanzi v Brooks*, 43 NY2d 778, 780 [1977]). Given Plaintiff's allegations and the procedural juncture, the Court denies Strength of Nature's motion to dismiss Plaintiff's causes of action alleging fraud and fraudulent concealment.

The Court grants Strength of Nature's motion to dismiss Plaintiff's General Business Law § 349 claim. The First Department has held, in ruling on a motion to dismiss, that a manufacturer's alleged "failure to provide adequate warnings by concealing information is, as a matter of law, not

a practice directed at consumers" (*Wholey v Amgen, Inc.*, 165 AD3d 458, 458 [1st Dept 2018]). Given this holding, the Court is constrained to dismiss Plaintiff's cause of action alleging a General Business Law § 349 violation.

F. Breach of Express Warranty, Breach of Implied Warranty (Ninth and Tenth Causes of Action)

Strength of Nature's motion to dismiss Plaintiff's claims alleging breach of express and implied warranties is denied. Pursuant to New York Uniform Commercial Code §2-313(1)(a) "any affirmation of fact or promise made by the seller to the buyer which relates to the goods and becomes part of the basis of the bargain creates an express warranty that the goods shall conform to the affirmation or promise." Likewise, §2-313(1)(b) states that "any description of the goods which is made part of the basis of the bargain creates an express warranty that the goods shall conform to the description." Here, Plaintiff alleges she relied on warranties that Defendants' products were "safe, healthy, protective, and/or natural." (NYSCEF Doc. 1 at ¶ 195). Although New York Uniform Commercial Code § 2-313(2) states a manufacturer's mere opinion or commendation of the goods does not create a warranty, as this is a pre-answer motion to dismiss further discovery is needed to ascertain whether an express warranty existed and whether Plaintiff relied on the warranty.

Moreover, there may be a breach of the implied warranty of merchantability if goods are unsafe "when used in the customary, usual and reasonably foreseeable manner" (*Denny v Ford Motor Co.*, 87 NY2d 248, 258-259 [1995]). Here, Plaintiff alleges that she developed uterine cancer from using Defendants' hair relaxer products in their usual and customary manner. These allegations are sufficient (*see generally Colarossi v C.R. Bard, Inc.*, 113 AD3d 407, 408 [1st Dept 2014]). Thus, the motion to dismiss Plaintiff's causes of action alleging a breach of express warranty and breach of implied warranty is denied.

G. Unjust Enrichment (Thirteenth Cause of Action)

Strength of Nature's motion to dismiss Plaintiff's claim alleging unjust enrichment is granted. As reiterated by the Court of Appeals, an unjust enrichment claim is not available if it simply duplicates, or replaces, a conventional contract or tort claim (*Corsello v Verizon New York, Inc.*, 18 NY3d 777, 790 [2012]). Unjust enrichment is reserved for "unusual situations when, though the defendant has not breached a contract nor committed a recognized tort, circumstances create an equitable obligation running from the defendant to the plaintiff." (*Id.*). This is not one of those cases. Nor has Plaintiff distinguished sufficiently her unjust enrichment claim from her other claims to survive dismissal. Therefore, this portion of L'Oréal's motion to dismiss is granted.

H. Negligent Failure to Recall (Eleventh Cause of Action)

Strength of Nature's motion to dismiss Plaintiff's claims alleging negligent failure to recall is granted. Plaintiff concedes there is no independent cause of action for "negligent failure to recall" in New York, and in any event, the failure to recall is duplicative of the numerous other negligent causes of action Plaintiff alleges – including failure to warn, ordinary negligence, gross negligence, and negligence *per se*. Therefore, this cause of action is dismissed.

I. Punitive Damages (Fifteenth Cause of Action)

Strength of Nature's motion to dismiss Plaintiff's claims alleging punitive damages is granted in part and denied in part. To the extent Strength of Nature argues punitive damages are not an independent cause of action this is correct and the fifteenth cause of action is dismissed (*Jean v Chinitz*, 163 AD3d 497 [1st Dept 2018]). However, to the extent Strength of Nature seeks to strike Plaintiff's demand for punitive damages in the wherefore clauses throughout her complaint, this portion of the motion is denied. At this pre-answer stage, without the benefit of any discovery, and accepting the allegations as true, the Court finds it premature to make any ruling

dismissing the claim for punitive damages (*Wholey v Amgen, Inc.*, 165 AD3d 458, 459 [1st Dept 2018]; *Sclafani v Brother Jimmy's BBQ, Inc.*, 88 AD3d 515, 516 [1st Dept 2011]). Thus, Strength of Nature's motion to dismiss Plaintiff's fifteenth cause of action which purports to assert a claim for punitive damages is granted. However Strength of Nature's request that the demand for punitive damages found throughout the wherefore clauses of Plaintiff's Complaint is denied.

Accordingly, it is hereby,

ORDERED that Strength of Nature's motion to dismiss motion to dismiss Plaintiff's Complaint is granted in part and denied in part; and it is further

ORDERED that L'Oréal's motion to dismiss is granted to the extent that Strength of Nature's second and fourth causes of action are dismissed solely to the extent they purport to allege a claim for manufacturing defect; and it is further

ORDERED that Strength of Nature's motion to dismiss is granted to the extent that Plaintiff's thirteenth cause of action alleging unjust enrichment and fourteenth cause of action alleging a violation of General Business Law § 349 are hereby dismissed; and it is further

ORDERED that Strength of Nature's motion to dismiss is granted to the extent that Plaintiff's fifteenth cause of action alleging punitive damages is dismissed. However the motion is denied to the extent Strength of Nature seeks dismissal of Plaintiff's demand for punitive damages in her numerous wherefore clauses; and it is further

ORDERED that the remainder of Strength of Nature's motion to dismiss pursuant to CPLR 3211(a)(7) is denied; and it is further

ORDERED that Strength of Nature's motion to dismiss pursuant to the statute of limitations and based on lack of personal jurisdiction is denied, without prejudice, with leave to renew upon further discovery; and it is further

ORDERED that the parties shall meet immediately and confer and submit a proposed preliminary conference order to the Court via e-mail to SFC-Part33-Clerk@nycourts.gov, and under no circumstances shall the order be submitted later than July 21, 2025. If for some reason the parties are unable to agree to a proposed preliminary conference order, they shall appear for an in-person preliminary conference on July 23, 2025 at 9:30 a.m. in Room 442, 60 Centre Street, New York, New York; and it is further

ORDERED that within twenty days of entry, Strength of Nature shall serve its Answer to what remains of Plaintiff's Complaint; and it is further

ORDERED that within ten days of entry, counsel for Plaintiff shall serve a copy of this Decision and Order, with notice of entry, on all parties via NYSCEF.

This constitutes the Decision and Order of the Court.

4/9/2025
DATE

Mary V Rosado JSC
HON. MARY V. ROSADO, J.S.C.

CHECK ONE:		CASE DISPOSED			x	NON-FINAL DISPOSITION	
		GRANTED		DENIED	x	GRANTED IN PART	OTHER
APPLICATION:		SETTLE ORDER				SUBMIT ORDER	
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN				FIDUCIARY APPOINTMENT	REFERENCE