

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CATHERINE NGUYEN, *individually and on behalf of all others similarly situated*,

Plaintiff,

-v.-

ALGENIST LLC,

Defendant.

22 Civ. 13 (KPF)

OPINION AND ORDER

KATHERINE POLK FAILLA, District Judge:

Enticed by the promise of age-defying effects, Catherine Nguyen (“Plaintiff”) purchased a skincare product from Algenist LLC (“Defendant”). Unhappy with her results after using the product, Plaintiff filed this putative class action against Defendant for false advertising and related claims. Her allegations center on one of the product’s ingredients: vegan collagen, a substance designed to mimic a naturally occurring protein found in skin, hair, and other parts of the body. According to Plaintiff, vegan collagen cannot possibly deliver the results Defendant advertises. For the reasons that follow, the Court grants Defendant’s motion to dismiss.

BACKGROUND¹

A. Factual Background

Collagen is a structural protein that occurs naturally in the human body.

¹ This Opinion draws its facts from the Complaint (Dkt. #1 (“Compl.”)), the well-pleaded allegations of which are taken as true for the purposes of this Opinion. The Court sources additional facts from the Declaration of Steven W. Garff in support of Defendant’s motion to dismiss and the exhibits attached thereto (Dkt. #24 (“Garff Decl.”)), including images of the products and packaging at issue in this case, which

(Compl. ¶ 3). It is a main building block for bones, skin, hair, muscles, tendons, and ligaments, and gives the skin “a firm, plump, and youthful look.” (*Id.* at ¶¶ 3, 15). A decrease in collagen production — which occurs naturally over time and can be accelerated by factors like smoking and sun exposure — undermines the skin’s structural integrity, leading to wrinkles, sagging skin, and weakened joint cartilage. (*Id.* at ¶¶ 4, 16-17). As a result, many consumers seek out collagen-based beauty products that are designed to combat the effects of natural collagen loss. (*Id.* at ¶ 18).

Defendant is a Delaware corporation that sells, among other things, products containing a proprietary vegan collagen. (Compl. ¶¶ 1, 12). Three of Defendant’s products are named in this suit: (i) Algenist Genius Collagen Calming Relief (“Calming Relief”), (ii) Algenist Genius Liquid Collagen (“Liquid Collagen”), and (iii) Algenist Genius Sleeping Collagen (“Sleeping Collagen”) (collectively, the “Products”). (*Id.* at ¶ 1 n.1). The Products’ packaging features Algenist branding and descriptive phrases. (*See* Garff Decl., Ex. A). Plaintiff alleges that each product’s front label features the words “ADVANCED ANTI-AGING.” (Compl. ¶ 27). The name of each product appears immediately under that phrase. (*See* Garff Decl., Ex. A). The lower half of the labels feature the

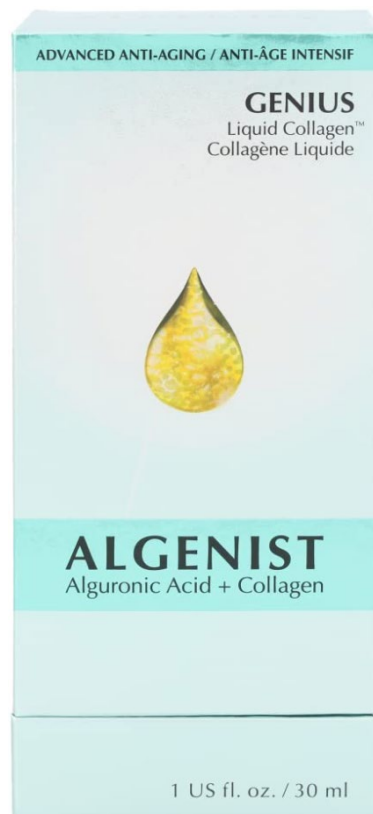
images the Court may consider because the Complaint incorporates them by reference. *See Hu v. City of New York*, 927 F.3d 81, 88 (2d Cir. 2019).

For ease of reference, the Court refers to Defendant’s memorandum of law in support of its motion to dismiss as “Def. Br.” (Dkt. #23); to Plaintiff’s memorandum of law in opposition to Defendant’s motion as “Pl. Opp.” (Dkt. #29); and to Defendant’s reply memorandum as “Def. Reply” (Dkt. #32).

word “ALGENIST,” in large letters and, in smaller letters below that, either “Alguronic Acid + Collagen” or “Alguronic Acid + Vegan Collagen.” (*Id.*).



*Calming Relief
(front)*



*Liquid Collagen
(front)*



*Sleeping Collagen
(front)*

Plaintiff, who is a New York citizen, purchased Calming Relief at a TJMaxx store in New York City in April 2021. (Compl. ¶ 11). The Complaint does not specify how much Plaintiff paid for the product. In making her decision to purchase Calming Relief over comparable products, Plaintiff relied on the assertions made on the product’s label and packaging. (*Id.*). The packaging led her to believe that Calming Relief contained “collagen” and/or

“vegan collagen” that would provide “advanced anti-aging benefits.” (*Id.*)

Based on these representations, Plaintiff paid “a substantial price premium” for the product. (*Id.*)

After her purchase, Plaintiff used Calming Relief as directed. (Compl. ¶ 11). To her dismay, she did not enjoy any “anti-aging or skin-firming benefits” as a result. (*Id.*) She asserts that the Products cannot possibly offer those benefits because the molecules in topically-applied collagen — vegan or otherwise — cannot penetrate the skin’s top layer. (*Id.* at ¶¶ 8-9, 26-27). This is because animal-based collagen has a molecular weight of 300 kilodaltons and thus is “too large to be absorbed into the skin when applied in a cream.” (*Id.* at ¶ 8). Vegan collagen has the same issue, claims Plaintiff, because it “[t]ypically ... mimic[s] the exact structure of human collagen.” (*Id.* at ¶ 26). In short, Plaintiff believes that Defendant’s advertising is “false, misleading, and deceptive” (*id.* at ¶ 32), because “no topical collagen product can stimulate and increase natural collagen production” (*id.* at ¶ 20).

Plaintiff claims that, had she known that the representations on Calming Relief’s label were untrue, she would not have paid a price premium for it. (Compl. ¶ 11). Despite her disappointment, she intends to purchase Calming Relief again in the future if it is truthfully labeled. (*Id.*) She brings this suit on behalf of a putative nationwide class of purchasers of the Products. (*Id.* at ¶ 1).

B. Procedural Background

Plaintiff initiated this action by filing the Complaint on January 3, 2022. (Dkt. #1). On January 25, 2022, Defendant requested leave to file a motion to

dismiss. (Dkt. #8). The Court held a pre-motion conference on February 18, 2022, at which time (i) Plaintiff declined an opportunity to amend her Complaint and (ii) the Court set a briefing schedule for Defendant's contemplated motion. (Feb. 18, 2022 Minute Entry). Defendant filed its motion to dismiss and supporting papers on February 25, 2022 (Dkt. #20), portions of which were refiled on March 3, 2022, to comply with the Court's filing conventions (Dkt. #22-24). Plaintiff filed her opposition on March 15, 2022. (Dkt. #29). The Court granted Defendant's request to extend its reply deadline by a week (Dkt. #31), and Defendant filed its reply on April 18, 2022 (Dkt. #32). Subsequently, Plaintiff filed a notice of supplemental authority (Dkt. #33), to which Defendant promptly responded (Dkt. #34). The motion is thus fully briefed and ripe for the Court's consideration.

DISCUSSION

A. Motions to Dismiss Under Federal Rule of Civil Procedure 12(b)(6)

In considering a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6), the Court must “draw all reasonable inferences in [p]laintiffs' favor, assume all well-pleaded factual allegations to be true, and determine whether they plausibly give rise to an entitlement to relief.” *Faber v. Metro. Life Ins. Co.*, 648 F.3d 98, 104 (2d Cir. 2011) (internal quotation marks omitted); see also *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009). “In deciding a Rule 12(b)(6) motion, the court may consider ‘only the facts alleged in the pleadings, documents attached as exhibits or incorporated by reference in the pleadings, and matters of which judicial notice may be taken.’” *Hu v. City of New York*,

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