

1 Howard L. Jacobs, State Bar No. 149709
Law Offices of Howard L. Jacobs
2 2815 Townsgate Road, Suite 200
Westlake Village, California 91361
3 Telephone: (805) 418-9892
Facsimile: (805) 418-9899

4 R. Daniel Fleck, Pro Hac Vice Application Pending
5 THE SPENCE LAW FIRM, LLC
15 South Jackson Street
6 P.O. Box 548
7 Jackson, Wyoming 83001
Telephone: (307) 733-7290
8 Facsimile: (307) 733-5248

9 Attorneys for the Plaintiff

10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA

12 FLAVIA OLIVEIRA,)	Case No.
)	
13 Plaintiff)	
)	
14 vs.)	COMPLAINT FOR DAMAGES FOR (1)
)	NEGLIGENCE; (2) STRICT LIABILITY; (3)
15 ALR INDUSTRIES, INC., a Nevada)	BREACH OF IMPLIED WARRANTY; (4)
Corporation; and DOES 1-30, inclusive,)	INTENTIONAL MISREPRESENTATION; (5)
)	NEGLIGENT MISREPRESENTATION; and;
16 Defendants.)	(6) BREACH OF CONTRACT
)	
17)	JURY TRIAL DEMANDED

18
19 COMES NOW FLAVIA OLIVEIRA, and for her Complaint against ALR INDUSTRIES,
20 INC., a Nevada corporation; and DOES 1-30, inclusive, states as follows:

21 **PARTIES, JURISDICTION AND VENUE**

- 22 1. Plaintiff Flavia Oliveira is, and at all times material was, a resident of Livermore,
23 California, in Alameda County.
- 24 2. Plaintiff is informed and believes, and thereon alleges, that defendant ALR
25 INDUSTRIES, INC. (hereinafter "ALRI") is, and at all material times was, a duly authorized
26 corporation, organized and existing under the laws of the State of Nevada, with its principal place of
27 business located in the State of Nevada, City of Las Vegas; is authorized to do business in the State of
28 California; and is transacting business within this judicial district.

1 purported nutritional supplements for the use of athletes and the general public under the brand name
2 "ALR Industries".

3 9. At all times relevant to this complaint, Ms. Oliveira was a world class, professional
4 cyclist. In December 2008, Ms. Oliveira joined her first professional cycling team, SC Michela Fanini
5 of Lunata-Lucca, Italy. In June 2009, Ms. Oliveira competed in Italy in the Giro del Trentino Donne,
6 an elite stage race for women.

7 10. Starting in early 2009, and up to and including June 19, 2009, Ms. Oliveira consumed
8 ALRI Hyperdrive 3.0 on a regular but not daily basis, in accordance with the provided instructions for
9 use and recommended dosages. Prior to 2009, plaintiff had never used any ALRI supplement, and had
10 never used any supplements manufactured or sold by defendants. Plaintiff researched ALRI
11 supplements, and satisfied herself through her research that ALRI "Hyperdrive 3.0" did not contain
12 any substances that were banned and/or prohibited from use in professional cycling.

13 11. Prior to taking ALRI "Hyperdrive 3.0," plaintiff Flavia Oliveira read literature on ALRI
14 and its products. With respect to ALRI "Hyperdrive 3.0," plaintiff Flavia Oliveira reaffirmed the
15 product use with her colleagues, and read the label, which did not list any substances banned for
16 professional cycling. Each source confirmed the product was appropriate for Plaintiff's needs and
17 endorsed the consumption of it as safe and free from any substance that could disqualify her from
18 competition, including, but not limited to, the anti-doping regulations of the Union Cycliste
19 Internationale ("UCI"). Plaintiff took these precautions to ensure compliance with all of these
20 regulations that governed her sport.

21 12. As a professional cyclist, plaintiff Flavia Oliveira was subject to regular drug testing.
22 On June 19, 2009, plaintiff Flavia Oliveira provided a urine sample for testing by the United States
23 Anti-Doping Agency ("USADA") (hereinafter "urine sample"). According to normal collection
24 procedures, the urine sample was divided into an "A" sample and a "B" sample, and then sealed in
25 tamper-proof containers.

26 13. On August 21, 2009, Ms. Oliveira was informed that her "A" urine sample taken on
27 June 19, 2009 had been tested positive for oxilofrine, a banned substance. Subsequent testing of her
28 "B" sample confirmed the presence of oxilofrine.

1 14. Ms. Oliveira's positive test for oxilofrine resulted in a 2-year suspension from
2 competitive cycling in accordance with the applicable anti-doping rules of her international federation,
3 UCI.

4 15. Plaintiff subsequently had the ALRI Hyperdrive 3.0 product tested by an independent
5 laboratory, which testing confirmed that ALRI Hyperdrive 3.0 contained methylsynephrine.
6 Methylsynephrine is a related substance to oxilofrine, and will cause a positive drug test for oxilofrine.

7 16. As a direct result of her exposure to oxilofrine in ALRI products, Ms. Oliveira has
8 suffered economic and non-economic damages as more fully set forth below under "Damages".

9 **FIRST CAUSE OF ACTION FOR NEGLIGENCE**

10 **(AGAINST ALL DEFENDANTS)**

11 17. Plaintiff repeats and realleges all of the allegations contained in paragraphs 1 through
12 16 of this Complaint as though each are set forth and alleged herein in full.

13 18. At all times relevant to this Complaint, Defendants, and each of them, engaged in the
14 business of formulating, providing materials for, manufacturing, marketing, distributing, and selling
15 ALRI products to athletes and members of the general public.

16 19. At all times relevant to this Complaint, ALRI's Hyperdrive 3.0 product was
17 contaminated with unlabeled substances, was distributed and sold to consumers in and around -----
18 County, California, and elsewhere throughout the United States. ALRI's Hyperdrive 3.0 was made
19 available to athletes and the general public who consumed them in a manner intended by Defendants at
20 the time of their sale or distribution.

21 20. At the time ALRI's Hyperdrive 3.0 was produced, distributed, and sold by Defendants,
22 and each of them, Defendants owed a duty to exercise reasonable care and caution in the production of
23 such products and in the subsequent distribution and sale of those products to athletes and the general
24 public to ensure that those products were safe, wholesome, and otherwise fit for consumption by
25 competitive athletes and the general public.

26 21. Notwithstanding the aforementioned duties, Defendants, and each of them, were
27 negligent and failed to exercise ordinary care in performing their duties to plaintiff. Such negligent
28 acts and omissions include, but are not limited to the following:

1 a. Carelessly and negligently failed to properly maintain the production facility in
2 that during the production process ALRI's Hyperdrive 3.0 was allowed to become contaminated with
3 oxilofrine or the related substance methylsynephrine;

4 b. Carelessly and negligently failed to monitor the production of ALRI's
5 Hyperdrive 3.0 although it knew or should have known of the existence of contamination;

6 c. Carelessly and negligently offered for sale or distribution to athletes products
7 contaminated with oxilofrine or the related substance methylsynephrine that was not disclosed on the
8 label;

9 d. Carelessly and negligently failed to shutdown its production facility although it
10 knew or should have known of the existence of the contamination;

11 e. Carelessly and negligently failed to warn athletes of the contamination in
12 ALRI's Hyperdrive 3.0 as heretofore described;

13 f. Carelessly and negligently failed to design a safe manufacturing process that
14 would have eliminated the possibility of cross contamination in products;

15 g. Carelessly and negligently failed to adequately test supplements;

16 h. Carelessly and negligently failed to provide accurate information for product
17 users to make informed decisions;

18 i. Carelessly and negligently failed to adequately clean machinery;

19 j. Carelessly and negligently failed to adhere to industry standards;

20 k. Carelessly and negligently failed to adhere to government regulations in
21 manufacturing ALRI's Hyperdrive 3.0;

22 l. Carelessly and negligently allowed improper methods of operation; and

23 n. Carelessly and negligently failed to disclose known dangers.

24 22. At the time and place of the events described herein, Defendants, and each of them,
25 owed a duty of reasonable care to plaintiff to avoid causing injury to her.

26 23. As a direct and proximate result of the acts and omissions of Defendants, and each of
27 them, plaintiff suffered injuries. As a consequence of these injures, plaintiff has sustained damages as
28 more specifically detailed herein, and other damages, as will be the subject of proof at trial.

1 substance methylsyneprine. Furthermore, Defendants, and each of them, knew or reasonably should
2 have known of this condition at that time.

3 30. Defendants, and each of them, failed to act in a reasonably prudent manner in marketing
4 ALRI's Hyperdrive 3.0 or in providing any warnings on the label of ALRI's Hyperdrive 3.0 or on the
5 ALRI website regarding the contents of the products.

6 31. Furthermore, Defendants, and each of them, manifested a knowing and reckless
7 indifference toward, and a disregard for the rights of athletes and consumers to make informed
8 decisions about the products they purchase and consume. Defendants, and each of them, failed to
9 accurately disclose the supplement ingredients on the label.

10 32. As a proximate result of one or more of the foregoing defective conditions, making
11 these products unreasonably fit, suitable or safe for their intended use when these products left the
12 control of Defendants, and each of them, plaintiff ingested the contaminated products and sustained
13 injuries. As a consequence of these injuries, plaintiff has sustained damages as more specifically
14 detailed herein, and other damages, as will be the subject of proof at trial.

15 **THIRD CAUSE OF ACTION FOR BREACH OF IMPLIED WARRANTY**
16 **(AGAINST ALL DEFENDANTS)**

17 33. Plaintiff repeats and realleges all of the allegations contained in paragraphs 1 through
18 32 of this Complaint as though each were set forth and alleged herein in full.

19 34. At all times hereinafter mentioned, Defendants, and each of them, owed to plaintiff a
20 warranty that goods shall be merchantable; and fit for the ordinary purposes for which such goods are
21 used; and conform to the promises or affirmations of fact made on the container or label.

22 35. ALRI's Hyperdrive 3.0 was represented by Defendants, and each of them, to contain
23 only the ingredients listed on the label of the bottle of Hyperdrive 3.0.

24 36. Notwithstanding the aforementioned warranty, Defendants, and each of them,
25 manufactured, distributed and/or sold the product Hyperdrive 3.0, which was unfit for consumption as
26 the products contained oxilofrine or the related substance methylsyneprine.

1 37. As a consequence of the injuries resulting from Defendants' breach of implied
2 warranty, plaintiff has sustained damages. These damages are all of those allowed at law, including
3 actual, incidental and consequential damages.

4 **FOURTH CAUSE OF ACTION FOR INTENTIONAL MISREPRESENTATION**
5 **(AGAINST ALL DEFENDANTS)**

6 38. Plaintiff repeats and realleges all of the allegations contained in paragraphs 1 through
7 37 of this Complaint as though each were set forth and alleged herein in full.

8 39. Upon information and belief, Defendants, and each of them, intentionally and recklessly
9 misrepresented the following material facts regarding the quality and contents of ALRI's Hyperdrive
10 3.0:

11 a. Defendants, and each of them, failed to disclose that Hyperdrive 3.0 contained
12 oxilofrine or the related substance methysynephrine.

13 b. Defendants, and each of them, falsely represented that Hyperdrive 3.0 contained
14 only the ingredients listed on the bottle of Hyperdrive 3.0 when, in fact, Hyperdrive 3.0 contained
15 oxilofrine or the related substance methysynephrine which was not disclosed on the product labeling.

16 40. Upon information and belief Defendants, and each of them, knew that the facts of such
17 representations were not true; and made these representations with the intention of misleading potential
18 customers as to the actual content of ALRI Hyperdrive 3.0.

19 41. The misrepresentations made by Defendants, and each of them, were made contrary to
20 duties imposed under common law, and by Federal and State statutory obligations.

21 42. The misrepresentations made by Defendants, and each of them, were made with a
22 knowing and reckless indifference toward, and a disregard for the rights of athletes and consumers to
23 make informed decisions about the products they purchase and consume.

24 43. The contents of ALRI Hyperdrive 3.0, namely that it contained oxilofrine or the related
25 substance methysynephrine, was a direct and proximate cause of the injuries and damages suffered by
26 plaintiff.

27 44. Except for Defendants' representations regarding the label, safety, purity,
28 appropriateness and quality of ALRI Hyperdrive 3.0, plaintiff would never have used it.

1 45. Upon information and belief, Defendants, and each of them, knew that the product,
2 ALRI Hyperdrive 3.0 contained oxilofrine or the related substance methylsynephrine

3 46. At all times relevant to this Complaint, ALRI's Hyperdrive 3.0 was distributed for and
4 were sold to competitive athletes and consumers, who consumed the products in the manner intended
5 by Defendants at the time of the product's manufacture and sale or distribution.

6 47. At the time consumers, including plaintiff, purchased or otherwise obtained ALRI's
7 Hyperdrive 3.0, they did so in reliance upon Defendants' representations made directly by Defendants,
8 through and at its facilities or through websites, representatives, signs, advertising and labeling. These
9 representations were made in such a manner that plaintiff and other consumers heard or otherwise
10 believed that ALRI's Hyperdrive 3.0 was safe or otherwise fit for consumption.

11 48. At the time the representations were made, they were untrue, as the products were not
12 reasonably safe or otherwise fit for consumption by plaintiff or other consumers.

13 49. At the time plaintiff purchased or was provided ALRI's Hyperdrive 3.0; Defendants,
14 and each of them, made or permitted untrue representations about the quality and contents of
15 Hyperdrive 3.0 to be made. Upon information and belief, Defendants made these representations
16 recklessly, knowing that the product Hyperdrive 3.0 contained oxilofrine or the related substance
17 methylsynephrine.

18 50. Plaintiff, relying upon and believing the representations made by and on behalf of
19 Defendants, and each of them, consumed ALRI's Hyperdrive 3.0.

20 51. As a direct and proximate result of plaintiff's reliance on Defendants' untrue
21 representations, plaintiff consumed the product Hyperdrive 3.0 and sustained injuries. As a
22 consequence of these injuries, plaintiff has sustained damages as more specifically detailed herein, and
23 other damages, as will be the subject of proof at trial.

24 **FIFTH CAUSE OF ACTION FOR NEGLIGENT MISREPRESENTATION**
25 **(AGAINST ALL DEFENDANTS)**

26 52. Plaintiff repeats and realleges all of the allegations contained in paragraphs 1 through
27 51 of this Complaint as though each were set forth and alleged herein in full.

1 53. Defendants, and each of them, negligently and recklessly misrepresented the following
2 material facts regarding the quality and contents of ALRI's Hyperdrive 3.0:

3 a. Defendants, and each of them, failed to disclose that Hyperdrive 3.0 contained
4 oxilofrine or the related substance methylnephrine.

5 b. Defendants, and each of them, falsely represented that Hyperdrive 3.0 contained
6 only the ingredients listed on the bottle of Hyperdrive 3.0 when, in fact, Hyperdrive 3.0 contained
7 oxilofrine or the related substance methylnephrine which was not disclosed on the product labeling.

8 54. These misrepresentations were made under circumstances in which Defendants, and
9 each of them, either knew, or in the exercise of reasonable care should have known, that the facts of
10 such representations were not true, or were not known to be true.

11 55. The misrepresentations made by Defendants, and each of them, were made contrary to
12 duties imposed under common law, and by Federal and State statutory obligations.

13 56. The contents of ALRI's Hyperdrive 3.0, namely that it contained oxilofrine or the
14 related substance methylnephrine, were a direct and proximate cause of the injuries and damages
15 suffered by plaintiff.

16 57. Except for Defendants' representations regarding the label, safety, purity,
17 appropriateness and quality of ALRI's Hyperdrive 3.0, plaintiff would never have used it.

18 58. Defendants, and each of them, knew or through the exercise of reasonable care should
19 have known that the product, Hyperdrive 3.0, contained oxilofrine or the related substance
20 methylnephrine.

21 59. At all times relevant to this Complaint, ALRI's Hyperdrive 3.0 was distributed for and
22 was sold to competitive athletes and consumers, who consumed the product in the manner intended by
23 Defendants at the time of the product's manufacture and sale.

24 60. At the time consumers, including plaintiff, was provided Hyperdrive 3.0, they did so in
25 reliance upon Defendants' representations made directly by Defendants, through and at its facilities or
26 through websites, representatives, signs, advertising and labeling. These representations were made in
27 such a manner that plaintiff and other consumers heard or otherwise believed that ALRI's Hyperdrive
28 3.0 was safe or otherwise fit for consumption.

1 c. Past and future pain, suffering and humiliation in an amount to be set forth at
2 trial; and

3 d. Loss of enjoyment of life, past and future, in an amount to be set forth at trial.

4 WHEREFORE, Plaintiff prays this Court to enter judgment in his favor and against defendants,
5 and each of them as follows:

6 a. Judgment for Plaintiff against Defendants, and each of them, for general damages in an
7 amount consistent with the allegations contained herein and to be proven at trial.

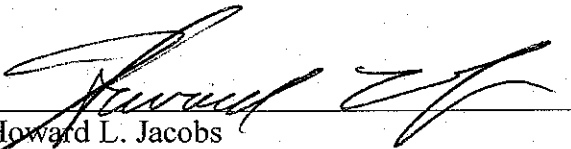
8 b. Judgment for Plaintiff against Defendants, and each of them, for special damages in an
9 amount consistent with the allegations contained herein and to be proven at trial.

10 c. Judgment for Plaintiff against Defendants, and each of them, for punitive damages in an
11 amount consistent with the allegations contained herein and to be proven at trial.

12 d. Judgment for Plaintiff against Defendants, and each of them, in an amount as supported
13 by the allegations in this Complaint and the evidence adduced at trial, that Plaintiff be awarded the
14 costs of suit incurred herein, and that Plaintiff be awarded such other costs and relief as the court
15 deems just and equitable.

16 DATED: Dec. 14, 2010

LAW OFFICES OF HOWARD L. JACOBS

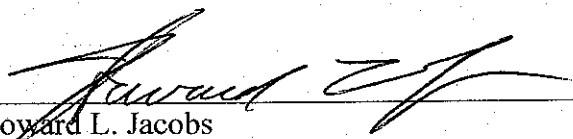
17
18 
19 Howard L. Jacobs
Attorneys for Plaintiff FLAVIA OLIVEIRA

JURY DEMAND

Plaintiff hereby demands a trial by jury of all issues so triable pursuant to Rule 38 of the Federal Rules of Civil Procedure.

DATED: Dec. 17, 2010

LAW OFFICES OF HOWARD L. JACOBS


Howard L. Jacobs
Attorneys for Plaintiff FLAVIA OLIVEIRA

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28