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IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

Michael S. Butler, the Michael S. Butler :
Beneficiary Grantor Trust dated March :
31, 2015, and the Michael S. Butler : Case No. 2025CH03730
Power of Appointment Trust, individually :
or, in the alternative, derivatively on : Hon. _____
behalf of Life Spine, Inc., :
:
Plaintiffs, :
:
v. :
:
St. Cloud Capital Partners III, SBIC, LP, :
Granite Creek Flexcap II, L.P., Kenneth :
Hachikian, Thomas Pearson, Thomas :
Goldblatt, Jeanne Goche, The Ivy :
Consulting Group, Ravinia Capital LLC :
and Continental Partners II LLC, :
:
Defendants. :
:

**VERIFIED COMPLAINT FOR DECLARATORY,
INJUNCTIVE AND MONETARY RELIEF**

Nature of the Action

1. Plaintiffs Michael S. Butler (“Butler”), the Michael S. Butler Beneficiary Grantor Trust dated March 31, 2015 (the “Butler Grantor Trust”) and the Michael S. Butler Power of Appointment Trust (the “Butler POA Trust,” along with Butler and the Butler Grantor Trust, collectively, the “Plaintiffs”), individually or, in the alternative, derivatively on behalf of Life Spine, Inc. (“Life Spine”), seek declaratory, injunctive and monetary relief to prevent ongoing irreparable harm being blatantly perpetrated by (i) St. Cloud Capital Partners III, SBIC, LP (“St. Cloud”) and Granite Creek Flexcap II, L.P. (“Granite Creek,” along with St. Cloud, the “Lenders”), (ii) Life Spine Directors Kenneth Hachikian (“Hachikian”), Thomas Pearson (“Pearson”), Thomas Goldblatt (“Goldblatt”) and Jeanne Goche (“Goche,” collectively with Hachikian, Pearson, and

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Goldblatt the “Lender-Controlled Directors”), (iii) The Ivy Consulting Group (“Ivy Consulting”), (iv) Ravinia Capital LLC (“Ravinia Capital”) and (v) Continental Partners II LLC (“Continental Partners,” along with the Lenders and the Lender-Controlled Directors,¹ collectively, the “Defendants”), as well as to redress the egregious wrongdoing by, and obtain damages from, Defendants based on their continuous and systematic unlawful acts.

2. Plaintiffs, collectively, are the majority shareholders in Life Spine, a company dedicated to transforming the spinal medical device industry to provide efficient solutions for both patients and surgeons.

3. Butler founded Life Spine in 2004 with the goal of revolutionizing the spinal pathology sector. Over the years, Butler developed a team committed to Life Spine’s growth and success, obtaining over 300 patents, trademarks and associated products, establishing a reputation as an industry leader in technological advancement, and contributing to the company’s success.

4. Despite Butler and the team’s positive work and effort to build Life Spine into a successful business, Life Spine’s future is now imperiled due to the self-interested and unlawful actions by the Defendants that are being perpetrated for their own benefit—not for the benefit of Life Spine or Plaintiffs, as the majority shareholders.

¹ Hachikian, Goldblatt, and Pearson have used certain limited liability companies as shells for their directorships. Pursuant to corporate records of Life Spine, Hachikian, Goldblatt and Pearson were appointed directors. In signing Board of Directors Agreements, (i) Hachikian signed on behalf of Ivy Consulting as Managing Partner, (ii) Goldblatt signed on behalf of Ravinia Capital as Principal, and (iii) Pearson signed on behalf of Continental Partners as Principal. Plaintiffs reserve their right to amend this Complaint to assert additional claims to the extent discovery reveals that Hachikian, Goldblatt and/or Pearson had no legal authority to act as a director of Life Spine. For purposes herein, (i) Hachikian, Ivy Consulting, Goldblatt, Ravinia Capital, Pearson and Continental Partners are all named as wrongdoers, and (ii) when “Lender-Controlled Directors” are referenced, that term shall include Hachikian, Ivy Consulting, Goldblatt, Ravinia Capital, Pearson and Continental Partners because of the confusion created by the Board of Directors Agreements.

5. When Life Spine first needed debt financing, the company entered into a lending arrangement with St. Cloud. Butler was CEO and Executive Chairman of Life Spine at the time, and he was lulled into a false sense that St. Cloud would act professionally and in good faith. St. Cloud held itself out as “a financial and strategic partner to strong management teams and industry entrepreneurs in fulfilling their long-term growth plans.”² St. Cloud touted that it “develop[s] close partnerships with the companies in which [St. Cloud] make[s] investments,” that its “common goal with each of our portfolio companies is to maximize performance and value creation.” St. Cloud lied. Not one of St. Cloud’s public representations could have been further from the truth, as Butler unfortunately learned over time.

6. In December 2020, St. Cloud brought Granite Creek into the lending relationship. When Granite Creek entered into the relationship, it publicly announced that it was “extremely pleased to . . . invest in Life Spine and work together with the management team on accelerating the company’s growth.”³ Granite Creek’s representation has proven false. Granite Creek has been looking to sell Life Spine, rather than invest in the company and further build upon its success.

7. By early 2023, Life Spine managed to repay \$3 million to the Lenders, using Life Spine’s own hard-earned revenue. Despite that good faith paydown by Life Spine, the Lenders took steps to keep Life Spine in their grip. The Lenders prevented Life Spine from accessing its line of credit with Bank of America, and the Lenders refused to consider a refinancing offer and term sheet from Bank of America. One Lender went so far as to threaten Bank of America, stating they would “bankrupt the company.” Along the way, the Lenders engaged in persistent financial

² See St. Cloud Capital LLC, “About Us,” available at <https://www.stcloudcapital.com/> (last visited Mar. 19, 2025).

³ See Granite Creek Press Release, “Granite Creek Capital Partners LLC Announces Investment in Life Spine, Inc.,” available at <https://www.granitecreek.com/news/granite-creek-capital-partners-llc-announces-investment-in-life-spine-inc/> (last visited Mar. 20, 2025).

intimidation of Life Spine, threatening to call their loan and sweep all cash from Life Spine's accounts.

8. By September 2023, under extreme pressure from the Lenders, Life Spine was forced into a restrictive forbearance agreement with onerous terms. Among other things, the Lenders demanded weekly cash calls, where they dictated which vendors would be paid, often short-paying or entirely withholding vendor payments. The Lenders' actions led to a hiring freeze and increased attrition at Life Spine, undermining the company's ability to function effectively and to fulfill its obligations under the loans.

9. Shortly after the Lenders coerced Life Spine into the forbearance agreement, Granite Creek threatened Butler personally if Life Spine breached the forbearance agreement.

10. In January 2024, the Lenders' improper actions escalated. The Lenders swept previously promised bond funds, leaving Life Spine in a perilous financial condition, after previously saying that the bond account would remain under Life Spine's control.

11. In early November 2024, the Lenders seized control of the Life Spine Board of Directors by placing handpicked Lender-Controlled Directors on the Board. With four seats held by Lender-Controlled Directors, the Lenders held a majority of the Board's seven seats. Importantly, not one of the Lender-Controlled Directors had experience with medical devices. Instead, they were handpicked by the Lenders to prioritize the Lenders' agenda without regard to Life Spine's business and operations.

12. Once the Lenders controlled the Board, the Lender-Controlled Directors—under instructions from the Lender—took actions that were biased, self-interested, and aimed at benefiting themselves personally and the Lenders. Their actions, as discussed below, were focused on removing Butler from Life Spine and setting up Life Spine for a fire sale so that the Lenders

could exit the lending relationship. These actions, of course, violated the Lender-Controlled Directors' fiduciary duties of care and loyalty to Life Spine and its majority shareholders.

The Lender-Controlled Directors' Breaches of Fiduciary Duties

13. Acting at the direction and under the control of the Lender, the Lender-Controlled Directors breached their fiduciary duties to Life Spine and Plaintiffs (as majority shareholders) through the following misconduct:

14. From November 2024, when Hachikian was appointed to the Board, through at least February 2025, Hachikian engaged in inappropriate workplace conduct. Hachikian has bullied and intimidated Life Spine employees. He has even gone so far as to engage in a pattern of sexual discrimination against Life Spine's Chief Compliance Officer and other female senior executives. Hachikian's sexual discrimination was so serious that Life Spine's Chief Compliance Officer resigned effective immediately on March 18, 2025. That resignation immediately put Life Spine out of compliance with a federal Corporate Integrity Agreement (discussed *infra*).

15. In January 2025, the Lender-Controlled Directors terminated Life Spine's longstanding engagement with outside corporate counsel without a valid business reason and without consulting Life Spine's general counsel. The Lender-Controlled Directors brought in new corporate counsel from Fox Swibel Levin & Carroll LLP ("Fox Swibel"), a much smaller law firm where Hachikian's son is a partner, and that son signed the engagement letter with Life Spine on behalf of the firm. Despite the clear conflict of interest, Hachikian did not recuse himself from the vote, and he voted in favor of retaining his son's law firm.

16. Hachikian engaged in a lengthy pattern of abusive behavior, both through written communications and phone calls, aimed at silencing and berating Life Spine's General Counsel, Chief Compliance Officer, and other members of Life Spine's executive team. Hachikian's actions

created an environment of intimidation and hostility, undermining the ability of executives to act and creating a chilling atmosphere where open and honest communication was stifled. Hachikian's actions were aimed at imposing the Lenders' objectives on the company and its employees.

17. From January 2025 through March 2025, the Lenders and the Lender-Controlled Directors have refused to negotiate and consider good-faith offers from third parties to extinguish Life Spine's outstanding debt to the Lenders. One third party was so perplexed by the Defendants' actions that he said, in substance, that he had never seen a Board member try harder to prevent a deal. All the while, the Lenders chided Butler and management to "keep guessing [about a potential deal] until they get it."

18. On March 12, 2025, the Lender-Controlled Directors voted to and did remove Butler as Chief Executive Officer of Life Spine. During that Board meeting, Hachikian initially stated that there was no cause for Butler's termination. Hachikian then stated in substance, "We can make one up." Hachikian's concocted cause was that Butler was allegedly soliciting resignations from employees, which is illogical and untrue. To the contrary, Butler tried to prevent employees from resigning from Life Spine. Since Butler's termination, the Lender-Controlled Directors have provided company personnel and third parties with shifting and untruthful information about Butler's employment status, falsely suggesting in one draft statement that Butler agreed to "step back" from his operational role.

19. Following Butler's termination as Chief Executive Officer, the Lender-Controlled Directors installed Pearson as Chief Restructuring Officer for Life Spine. The Lender-Controlled Directors directed Life Spine to pay Pearson an additional \$9,450 per week for two days' worth of services, plus out-of-pocket costs, on top of Pearson's compensation as a member of the Board of Directors. The Lender-Controlled Directors' \$490,000-plus decision created a completely

unnecessary set of expenses for Life Spine, particularly for a Corporate Restructuring Officer who lives in Kansas—not the Chicago area—and is conflicted by virtue of his relationship to the Lenders.

20. After receiving notice from Butler about the prospect of litigation related to the Lender-Controlled Directors' misconduct set forth herein, the Lender-Controlled Directors have refused to acknowledge whether they are retaining all records and communications related to this matter. The Lender-Controlled Directors have refused to respond to repeated requests from Butler's counsel to preserve evidence.

21. The Lender-Controlled Directors' disloyal acts and self-dealing directly contravened Life Spine's and Plaintiffs' interests. Moreover, the Lender-Controlled Directors' actions have crippled the company's ability to operate and generate revenue.

22. From November 2024 through March 2025, the Lender-Controlled Directors acted in secret with one another—intentionally excluding the other Life Spine Board members—including an independent board member—in key decisions.

23. Importantly, because of the self-interested actions taken by the Lender-Controlled Directors and the Lenders, Life Spine has been unable to pay its expenses, including to vendors and service providers. One such unpaid vendor is Gizmo Medical, LLC ("Gizmo Medical") (which is a separate entity owned by Butler and two other people), to whom Life Spine owes **more than \$2 million**. At the direction of the Lenders and the Lender-Controlled Defendants, Life Spine has refused to pay Gizmo Medical despite the importance of Gizmo Medical to Life Spine's operations. Gizmo Medical produces instruments, which Life Spine needs for its business to be successful. There are other such vendors and service providers who remain unpaid and whom have significant outstanding balances with Life Spine, yet the Lender-Controlled Directors have found

ways to engage in self-dealing to help themselves, their family members and the Lenders at the expense of everyone else connected to the company.

The Lenders' Liability

24. The Lenders refused to negotiate in good faith with Butler and Life Spine's executive management team about refinancing their debt, and the Lenders have refused to engage in good faith to negotiate with third parties about potential deals to extinguish the Lenders' outstanding debt.

25. From 2023 forward, the Lenders refused to engage in reasonable debt restructuring negotiations. On more than a dozen occasions, Life Spine's executive management team proposed reasonable offers to offset debt, capitalize payment-in-kind ("PIK") interest, or incorporate additional banking facilities to stabilize the company's financial position. Rather than engaging in good faith negotiations, the Lenders ignored these proposals, openly mocked them, and said to "keep guessing until you get it."

26. Most recently, the Lender-Controlled Directors refused to attend a Board meeting scheduled for March 31, 2025 ("March 31 Board Meeting") to consider an Indication of Interest, dated March 28, 2025 (the "CA IOI"), presented by Chicago Atlantic ("CA"), whereby CA would provide the Company with a \$10 million term loan ("CA Term Loan"), to be funded in full at closing of the CA Term Loan.⁴ The proceeds of the proposed CA Term Loan, coupled with other financial arrangement Butler has been able to secure, would be sufficient to pay off the Lenders in full. Moreover, in connection with the CA Term Loan, Butler (along with his trusts) agreed to

⁴ After the CA IOI was sent to the other members of the Board on March 28, 2025, Butler was successful in negotiating an increase in the funding amount CA would provide to Life Spine. As of March 31, 2025, instead of \$10 million, CA agreed to provide \$12 million immediately, with an additional \$3 million thereafter.

absorb an additional 25% of the warrant dilution due to the Lenders. Plaintiffs believe that this arrangement provides the Company a clear path to maximizing shareholder value and continuing the viability of the Company. But the Lender-Controlled Directors, unsurprisingly, refused to attend the March 31 Board Meeting to discuss the CA IOI and an appropriate path forward.

27. Rather than attend the duly-called March 31 Board Meeting, the Lender-Controlled Directors sent Butler an email telling him that, even though he is a director of Life Spine, he has “no authority to negotiate or act on behalf of Life Spine and no right to contact Life Spine’s existing customers.”⁵ This assertion flatly contradicts applicable Delaware corporate law and is emblematic of the misconduct of the Lender-Controlled Directors at the direction of the Lenders.

28. Granite Creek, without the knowledge or approval of Life Spine, improperly obtained banking information about Life Spine from a financial institution. Granite Creek had no right to this information, as Granite Creek was not authorized to access Life Spine’s account and its related information, and Granite Creek had no DACA agreement in place. Life Spine later learned that the financial institution was a limited partner in Granite Creek’s funds, meaning Granite Creek used unlawful means through a business connection to access Life Spine’s account and related information.

29. Even before the Lenders seized control of Life Spine’s Board of Directors, the Lenders’ representatives engaged in and aided and abetted misdeeds for the Lenders’ own personal gain and for their own economic benefit, all to the detriment of Life Spine and Plaintiffs, as the majority shareholders in Life Spine.

⁵ A true and accurate copy of the e-mail from Thomas Pearson to Michael Butler, dated March 31, 2025 is annexed hereto as **Exhibit “A.”**

30. At the direction of the Lenders, the Lender-Controlled Directors executed a *coup d'etat*. First, they removed Butler as Chairman of the Board and then they ousted Butler as President and CEO of Life Spine. All of this was done in a coordinated, secretive effort with Life Spine's then-COO, Mueller, that began before the Lenders flipped the Board in the fall of 2024. Mueller's efforts with the Lenders ultimately paid off for him, as he was recently appointed CEO of Life Spine upon Butler's termination.

31. Despite Life Spine's precarious financial situation, Mueller—who was installed by the Lender-Controlled Directors and is acting at their direction—has engaged in unethical conduct and misrepresentations, including silencing and intimidating employees and falsely describing the nature of Butler's termination.

32. The damage from Defendants' wrongful actions is ongoing and causing irreparable harm to Plaintiffs and Life Spine. The Defendants are making alarming decisions that are significantly decreasing the value of Plaintiffs' interests in Life Spine. Defendants are essentially trying to obtain sole control over Life Spine to line their own pockets.

33. It is clear why the Lenders and the Lender-Controlled Directors have no interest in seeking to effectuate a transaction that would pay the Lenders' debt in full. Doing so will strip the Lenders of their control over Life Spine. While the Lenders would continue to have the ability to appoint two directors to the extent they continue to own preferred shares of stock in Life Spine, they were only able to appoint an additional two directors because their debt remains outstanding; if that debt is paid in full, the Lenders would lose the ability to appoint those directors because the Note Agreement and the Pledge Agreements will no longer be in effect.

34. In such event, the Board, along with all decision making authority, would likely revert to Plaintiffs as all other directors—except for a truly independent director (unlike the

Lender-Controlled Directors)—can only be elected by the holders of the common stock (of which, Plaintiffs hold the majority). This would be unpalatable for the Lenders who would only be passive preferred equity holders.

35. Making matters worse, the Lender-Controlled Directors have now scheduled a special Board meeting for Friday, April 4, 2025 (“April 5 Board Meeting”), where they intend to address (i) a possible forbearance agreement with the Lenders, which would include the granting of releases to the Defendants; this is an obvious attempt to scuddle the relief Plaintiffs seek in the Verified Complaint; (ii) adopting a program to grant stock in Life Spine to certain management and the Lender-Controlled Directors as an obvious attempt to dilute Plaintiffs’ interest in Life Spine so that in the event Butler and Life Spine succeed in paying off the Lenders’ debt, Plaintiffs will no longer be the majority owners of Life Spine; and (iii) removing Butler as a director and member of the Board, which would completely eliminate Butler’s involvement in Life Spine.

36. But allowing the Lenders the continuing ability to control the Lender-Controlled Directors and potentially dilute Plaintiffs’ holdings is extremely harmful to Plaintiffs, as the allegations in this Complaint clearly show.

The Lenders’ Commercially Unreasonable UCC Sale of Plaintiffs’ Majority Ownership Interest in Life Spine

37. On March 7, 2025, St. Cloud issued notice (the “UCC Sale Notice”)⁶ of a so-called “public” foreclosure sale pursuant to the Uniform Commercial Code (“UCC Sale”) of Butler and his trusts’ majority ownership stake in Life Spine. St. Cloud scheduled the UCC Sale for nineteen days later, on March 26, 2025, halfway across the country in Los Angeles, California (a city where Life Spine has no place of business).

⁶ A true and accurate copy of the UCC Sale Notice is annexed hereto as **Exhibit “B.”**

38. On March 20, 2025, St. Cloud continued the UCC Sale to April 9, 2025, in Los Angeles, California.⁷

39. While the Lenders have claimed that the UCC Sale is public, they are treating it as a private sale. To date, the Lenders have failed to market or otherwise notify the public of the sale. No notice of the sale has been published in any newspaper or other periodical, which is a basic starting point to actively identify buyers for Plaintiffs' majority interest in Life Spine on the open market.

40. The Lenders' UCC Sale in Los Angeles, California, for assets located in Illinois and without any advertising does not meet the commercially reasonable standard under the UCC.

41. Life Spine is headquartered in Illinois, and it has its employees based in Illinois. Plaintiffs, as majority shareholders and whose stock is set to be sold, are all located in Illinois. St. Cloud is the only party with any ties to Los Angeles, California, which sits halfway across the country from Life Spine.

42. The Lenders' decision to direct the UCC Sale to occur in Los Angeles, California, will not result in competitive bidding in the appropriate market, nor does it lend itself to an actual sale of Plaintiffs' majority ownership stake in Life Spine.

Relief Sought by Plaintiffs

43. Plaintiffs are in immediate need for injunctive relief to enjoin the improper UCC Sale pending a resolution of the numerous troubling claims of improper conduct alleged herein that were (and continue to be) perpetrated by the Defendants.

⁷ A true and accurate copy of the Notice of Continuance of the UCC Sale is annexed hereto as **Exhibit "C."**

44. In addition to injunctive relief with respect to the UCC Sale, Plaintiffs seek injunctive relief to enjoin the Defendants from continuing their wrongful conduct while associated with Life Spine.

45. Plaintiffs also seek damages from the Defendants to compensate Plaintiffs for Defendants' wrongful and egregious conduct with respect to their interactions with Life Spine.

46. In further support, Plaintiffs state as follows.

The Parties

47. Plaintiff Michael S. Butler is a citizen of the State of Illinois, and he resides in St. Charles, Illinois. Butler, along with his trusts that are also Plaintiffs in this lawsuit, hold the majority interest in Life Spine, with ownership of 50.7% of the common stock of Life Spine. Up until March 12, 2025, Butler was the Chief Executive Officer of Life Spine. He was terminated from that position by the Lender-Controlled Directors on March 12, 2025. Butler also has served and continues to serve as a member of Life Spine's Board of Directors.

48. Plaintiff Michael S. Butler Beneficiary Grantor Trust dated March 31, 2015, is a trust created under the laws of Illinois.

49. Plaintiff Michael S. Butler Power of Appointment Trust is a trust created under the laws of Illinois.

50. Defendant St. Cloud Capital Partners III SBIC, LP. is a Delaware limited partnership, with its principal place of business in Los Angeles, California.

51. Defendant Granite Creek Flexcap II, L.P. is a Delaware limited partnership, with its principal place of business in Chicago, Illinois.

52. Defendant Kenneth Hachikian was appointed to the Life Spine Board of Directors on November 7, 2024, by the Lenders after St. Cloud purported to exercise its rights to vote

Plaintiffs' shares of stock. As a Life Spine Board member, Hachikian has owed and continues to owe fiduciary duties of candor, care, good faith, and loyalty. Hachikian also served and continues to serve as Executive Chairman of Life Spine. Hachikian is a citizen of the State of Illinois, and he resides in Deerfield, Illinois.

53. Defendant Thomas Pearson was appointed to the Life Spine Board of Directors on November 5, 2024, by the Lenders. As a Life Spine Board member, Pearson owed and continues to owe fiduciary duties of candor, care, good faith, and loyalty. Pearson is a citizen of the State of Kansas, and he resides in Kansas.

54. Defendant Thomas Goldblatt was appointed to the Life Spine Board of Directors on November 5, 2024, by the Lenders. As a Life Spine Board member, Goldblatt owed and continues to owe fiduciary duties of candor, care, good faith, and loyalty. Goldblatt is a citizen of the State of Illinois, and he resides in Chicago, Illinois.

55. Defendant Jeanne Goche was appointed to the Life Spine Board of Directors on November 7, 2024, by the Lenders after St. Cloud purported to exercise the Plaintiffs' voting rights and vote Plaintiffs' shares of stock. As a Life Spine Board member, Goche owed and continues to owe fiduciary duties of candor, care, good faith, and loyalty. Goche is a citizen of the State of Iowa, and she resides in West Branch, Iowa.

56. Defendant Ivy Consulting is an Illinois limited liability company with its address in Deerfield, Illinois. As stated above, the defined term "Lender-Controlled Directors" shall include Ivy Consulting because of the ambiguity created by the Board of Directors Agreement executed by Hachikian on behalf of Ivy Capital.

57. Defendant Ravinia Capital is an Illinois limited liability company with its address in Chicago, Illinois. As stated above, the defined term "Lender-Controlled Directors" shall include

Ravinia Capital because of the ambiguity created by the Board of Directors Agreement executed by Goldblatt on behalf of Ravinia Capital.

58. Defendant Continental Partners is a Kansas limited liability company with its address in Lawrence, Kansas. As stated above, the defined term “Lender-Controlled Directors” shall include Continental Partners because of the ambiguity created by the Board of Directors Agreement executed by Pearson on behalf of Continental Partners.

59. Non-party Life Spine is a Delaware Corporation, with its principal place of business in Huntley, Illinois.

VENUE

60. Venue is proper pursuant to 735 ILCS 5/2-101 because two of the Defendants herein (Kenneth Hachikian and Ivy Consulting) reside in Cook County, Illinois and these two Defendants are joined in this lawsuit in good faith and with probable cause for the purpose of obtaining a judgment against them and not solely for the purpose of fixing venue in Cook County.

THE FACTS

I. Background Regarding Life Spine’s Lending Relationship with the Lenders.

61. Life Spine’s and St. Cloud’s lending relationship dates back to 2016, when St. Cloud first provided financing to Life Spine in the form of 12% senior secured subordinated notes (the “12% Subordinated Notes”). In connection with that transaction, St. Cloud obtained certain warrants to purchase voting and non-voting shares of common stock of Life Spine. The maturity date for the 12% Subordinated Notes was October 25, 2021.

62. The documents evidencing the 12% Subordinated Notes were amended from time to time, with an Amended and Restated Note and Warrant Purchase Agreement being entered into

on December 18, 2020 (as thereafter amended from time to time) (the “Note Agreement”).⁸ St. Cloud is the collateral agent for the purchasers of the notes. While St. Cloud was previously the only noteholder under the 12% Subordinated Notes, the holders of the 12% Subordinated Notes under the Note Agreement are now St. Cloud and Granite Creek (*i.e.*, the Lenders). The Note Agreement is governed by Illinois law.

63. In addition to the Note Agreement, the following additional documents were executed on or about December 18, 2020, in connection with the transaction governed by the Note Agreement: (i) Pledge Agreements made by the Butler Grantor Trust and the Butler POA Trust (the “Trust Pledge Agreement”),⁹ in favor of St. Cloud, as agent, pledging 12,673,667 shares of common stock of Life Spine held or owned by the Butler Grantor Trust and the Butler POA Trust (collectively, the “Specified Pledged Collateral”); and (iii) an Amended and Restated Pledge Agreement made by Butler in favor of St. Cloud, as agent (the “Butler Pledge Agreement,” and with the Trust Pledge Agreements, collectively, the “Pledge Agreements”),¹⁰ pursuant to which Butler pledged his interests in the Specified Pledged Collateral, which interests were pledged by the Butler Grantor Trust to Butler pursuant to Collateral Pledge Agreements dated as of October 31, 2016 and December 10, 2020. Each of the Pledge Agreements are governed by Illinois law.

64. Also, around the time of the execution of the Note Agreement, the Lenders obtained Preferred Stock in Life Spine with dividend rights, in exchange for an approximately \$13 million equity infusion into Life Spine.

⁸ A true and accurate copy of the Note Agreement is annexed hereto as **Exhibit “D.”**

⁹ A true and accurate copy of the Trust Pledge Agreement is annexed hereto as **Exhibit “E.”**

¹⁰ A true and accurate copy of the Butler Pledge Agreement is annexed hereto as **Exhibit “F.”**

65. While the maturity date under the Note Agreement was June 18, 2023, Life Spine was unable to pay the obligations due the Lenders. Accordingly, the parties entered negotiations to execute a forbearance agreement to extend the maturity date of the 12% Subordinated Notes.

66. Life Spine was compelled, under duress, to execute the Forbearance Agreement and Fourth Amendment to the Amended and Restated Note and Warrant Purchase Agreement, dated as of August 16, 2023 (the “Forbearance Agreement”).¹¹ At the time of the Forbearance Agreement, the principal amount owed to St. Cloud was \$9.5 million, and the principal amount owed to Granite Creek was \$14 million. Upon the effective date of the Forbearance Agreement, the maturity date of the Notes was extended through August 15, 2024 (the “Forbearance Period”).

67. As of the date of the filing of this Verified Complaint, Life Spine has made over \$19 million in payments to the Lenders, and all interest payments are current.

68. The Forbearance Agreement amended the Note Agreement in various respects. Among other things, the Note Agreement was amended to include a new section, which provided that Life Spine had engaged BofA Securities as its financial advisor to explore a potential sale of all or substantially all of Life Spine’s assets or equity.

69. Various additional documents were executed in connection with the Forbearance Agreement. These included (i) an Irrevocable Proxy (the “Irrevocable Proxy”),¹² with respect to the Specified Pledged Collateral, executed by each of the Butler Grantor Trust and the Butler POA Trust in favor of St. Cloud, as agent, (ii) a Reaffirmation of Note Documents,¹³ whereby the Plaintiffs reaffirmed their obligations under the Note Agreement and related documents, (iii) a

¹¹ A true and accurate copy of the Forbearance Agreement is annexed hereto as **Exhibit “G.”**

¹² A true and accurate copy of the Irrevocable Proxy is annexed hereto as **Exhibit “H.”**

¹³ A true and accurate copy of the Reaffirmation of Note Documents is annexed hereto as **Exhibit “I.”**

Limited Guaranty by Butler,¹⁴ and (iv) warrants to purchase common stock of Life Spine delivered to the Lenders, exercisable for such number of shares of common stock representing 6.06% (for St. Cloud) and 8.94% (for Granite Partners) of Life Spine's aggregate shares of common stock.¹⁵

70. The Forbearance Agreement also provided that Life Spine's certificate of incorporation was to be amended to increase preferred dividends to a rate of 10% per annum of the original issue price of a share of Preferred Stock in Life Spine (compounded annually), which the Lenders held.

II. The Corporate Integrity Agreement Between the Department of Health and Human Services and Life Spine.

71. In 2018, a complaint was filed in the United States District Court for the Southern District of New York against Life Spine and others, under the *qui tam* provisions of the False Claims Act. The federal government intervened and negotiated a Stipulation and Order of Settlement and Dismissal ("Stipulation") entered on October 29, 2019.

72. Life Spine then entered a Corporate Integrity Agreement ("CIA") in March 2021 with the Office of Inspector General ("OIG") of the Department of Health and Human Services.¹⁶

73. Among other things, the CIA required that Life Spine establish and maintain a Compliance Program, appoint a Compliance Officer, and create a Compliance Committee. Under the CIA, all directors are designated "Covered Persons" (as defined in the CIA). The CIA expressly provides that Life Spine shall "ensure that all prospective and current Covered Persons are not Ineligible Persons by implementing [certain defined] screening requirements."

¹⁴ A true and accurate copy of the Limited Guaranty by Butler is annexed hereto as **Exhibit "J."**

¹⁵ True and accurate copies of the warrants are annexed hereto as **Exhibit "K."**

¹⁶ A true and accurate copy of the CIA is annexed hereto as **Exhibit "L."**

74. Pursuant to the CIA, if Life Spine proposes to sell any or all of its business, business units or locations (whether through a sale of assets, sale of stock or other type of transaction) that are subject to the CIA, the CIA will be binding on the purchaser of any business, business unit or location. Life Spine is required to give notice of such sale to OIG within 30 days following the closing of the transaction. Life Spine could seek a determination that any proposed purchaser will not be subject to the requirements of the CIA, but in order to do so, Life Spine must notify the OIG in writing of the proposed sale at least 30 days in advance.

75. Life Spine is also required to submit annual reports to the OIG, which must include, among other things, (i) any change in the identity, position description, or other noncompliance job responsibilities of the Compliance Officer; (ii) a current list of the Compliance Committee members; (iii) a current list of the Board members who are responsible for satisfying the Board compliance obligations; (iv) required Board resolutions that are mandated by the CIA; and (v) a description of any changes to Life Spine's corporate structure.

76. If Life Spine fails to abide by the obligations set forth in the CIA, it may be liable for monetary penalties and/or be excluded from federal health care programs, which would be catastrophic to Life Spine's business.

77. The term of the CIA is five years from the effective date (*i.e.*, until March 2026), although it could be extended if there are any breaches of the provisions of the CIA.

78. On March 18, 2025, Life Spine's Chief Compliance Officer resigned effectively immediately from Life Spine. This resignation followed a lengthy pattern of sexual discrimination perpetrated by Hachikian against Life Spine's female senior executive personnel, which the Lenders and Life Spine's new corporate counsel never took any steps to address even though they were informed of this issue as early as January 2025.

III. The Patent Infringement Lawsuit Filed by Globus Medical, Inc. Against Life Spine

79. In October 2021, Globus Medical, Inc. (“Globus”) filed a lawsuit in the United States District Court for the District of Delaware against Life Spine alleging infringement of certain patents related to Globus’ technology.

80. Life Spine has denied that it is liable for any claims asserted by Globus and has asserted counterclaims against Globus, including seeking (i) declarations of non-infringement regarding the patents at issue, and (ii) declarations of invalidity of certain patents.

81. At this time, a jury trial is set to begin in August 2025 (although previous trial dates have been adjourned in the past). While Life Spine has and will continue to vigorously dispute the claims made against it by Globus and will vigorously prosecute its counterclaims against Globus, litigation is inherently uncertain and there is no way to predict which party will be victorious.

IV. Subsequent Alleged Defaults Under the Note Documents and St. Cloud’s Exercising of Remedies, Including Voting Plaintiffs’ Shares of Common Stock.

82. While Life Spine—at the direction and effort of Butler—has sought to refinance the debt owed to the Lenders for the last several years, the uncertain resolution of the Globus litigation, as well as the continued impact of the CIA and its requirements, affected Life Spine’s value as a company and its ability to obtain financing from a traditional lender. Ultimately, given its financial position, certain events of default occurred under the Note Agreement and Forbearance Agreement.

83. On or about March 13, 2024, St. Cloud, as agent, sent Life Spine a letter which referenced certain alleged defaults under the Note Documents and Forbearance Agreement. Because of these defaults, St. Cloud terminated the Forbearance Period, but did not seek to exercise any rights at that time.

84. Thereafter, on August 15, 2024, St. Cloud, as agent, sent Life Spine another letter referencing additional alleged defaults. St. Cloud elected to exercise its rights to impose the default rate of interest on the outstanding amount of the 12% Subordinated Notes. No other rights were exercised at that time.

85. On November 7, 2024, St. Cloud, as agent, sent Life Spine and Plaintiffs a third notice of default (the “November 2024 Default Notice”).¹⁷ This time, St. Cloud, as agent, purportedly pursuant to the Pledge Agreements and the Irrevocable Proxy, elected to exercise all of Plaintiffs’ voting rights with respect to the Specified Pledged Collateral, and prohibited Plaintiffs from doing the same.

86. Prior to the November 2024 Default Notice, the Board consisted of two directors appointed by the Lenders and three directors appointed by Plaintiffs. Utilizing its voting rights, St. Cloud executed an Action by Written Consent of the Majority Common Stockholders of Life Spine (“November 7, 2024 Written Consent”),¹⁸ and adopted the following actions (among others): (i) Hachikian and Goche were each appointed as directors of the Board; (ii) Life Spine’s bylaws were amended such that a special meeting of the Board could be called by two directors; and (iii) notwithstanding anything in the bylaws to the contrary, no officer or employee of Life Spine was authorized to commence a bankruptcy or other insolvency proceeding on behalf of Life Spine without a resolution being authorized by the Board. The November 7, 2024 Written Consent was signed by St. Cloud on behalf of the Plaintiffs.

¹⁷ A true and accurate copy of the November 2024 Default Notice is annexed hereto as **Exhibit “M.”**

¹⁸ A true and accurate copy of the November 7, 2024 Written Consent is annexed hereto as **Exhibit “N.”**

87. The day before the November 7, 2024 Written Consent was signed (*i.e.*, on November 6, 2024), Hachikian and Goche executed a “Consent, Agreement and Acceptance,” indicating that they each consented, agreed and accepted the appointment as directors of Life Spine.¹⁹

88. On November 7, 2024, Life Spine entered into a Board of Directors Agreement with Ivy Consulting, not Hachikian, individually, which was executed by Hachikian as Managing Partner. Hachikian never signed a Board of Directors Agreement in his individual capacity.²⁰ Upon information and belief, Board of Director Agreements were also executed by Ravinia Capital (not Goldblatt) and Continental Partners (not Pearson).

89. On November 7, 2024, St. Cloud executed an additional Action by Written Consent of the Majority Common Stockholders of Life Spine (“Second November 7, 2024 Written Consent”),²¹ and removed Richard Mueller, then Life Spine’s Chief Operating Officer, as a director and member of the Board. The Second November 7, 2024 Written Consent was signed by St. Cloud on behalf of the Plaintiffs.

90. Accordingly, after the Second November 7, 2024 Written Consent, the Lenders effectively seized control of Life Spine’s Board of Directors. As of November 7, 2024, the company’s Board was constituted as follows:

¹⁹ True and correct copies of the Hachikian and Goche executed a “Consent, Agreement and Acceptance” executed by Hachikian and Goche are annexed hereto as **Exhibits “O” and Exhibit “P”**, respectively.

²⁰ A true and accurate copy of the Ivy Consulting Board of Directors Agreement is annexed hereto as **Exhibit “Q.”**

²¹ A true and accurate copy of the Second November 7, 2024 Written Consent is annexed hereto as **Exhibit “R.”**

Life Spine Representation

Michael Butler
Omar Faruqi

Lender-Appointed Representation

Thomas Pearson
Thomas Goldblatt
Jeanne Goche
Kenneth Hachikian

Independent Representation

James Pastena

91. While Hachikian and Goche purported to be “independent,” they were independent only in name. Both were chosen and placed on the Board by the Lenders, and as discussed below, they were doing the bidding for the Lenders and not acting in the best interests of Life Spine. The Lender-Controlled Directors’ compensation for being members of the Board—agreed to by the Lenders—was fixed at \$10,000 each per month from November 2024 through February 2025, and \$15,000 per quarter thereafter beginning with the 2025 Q1 Board meeting. The amount paid to the Lender-Controlled Directors is excessive. These exorbitant expenses drained much needed cash from Life Spine and its operations, and should not have been paid when the Lender-Controlled Directors breached their fiduciary obligations to Life Spine and its majority shareholders.

V. The Defendants’ Misconduct

92. The misconduct by the Lender-Controlled Directors constitute breaches of their fiduciary duties of care and loyalty to Life Spine and Plaintiffs, as the majority shareholders. The Lender-Controlled Directors placed their interests and the interests of the Lenders ahead of Life Spine, and the Lender-Controlled Directors failed to act in the best interests of Life Spine. As the puppet-masters for the Lender-Controlled Directors, the Lenders aided and abetted the other Defendants’ improper actions. Set forth below are clear and egregious examples of this unlawful misconduct by the Defendants after the Lenders hijacked control of Life Spine’s Board of Directors.

93. During Board meetings in November 2024, Hachikian was consistently the voice of the Lenders, stating what the Lenders would agree to do with respect to the debt owed to them by Life Spine. In so doing, Hachikian was not acting as a fiduciary to Life Spine. From the moment that Hachikian was introduced to Life Spine by the Lenders, Hachikian's animus and bias against Butler was evident, with Hachikian angling to isolate and ultimately terminate Butler's employment. Hachikian's animus and bias was on display to the full Board of Directors during meetings, with one Independent Director openly questioning Hachikian's partiality and slanted views in favor of the Lenders.

94. One item that the Lenders sought and Hachikian pushed was the creation of a "Stryker Committee"²² of the Board of Directors, with the participants being Pearson, Mueller and Hachikian, even though Butler was making the most progress with his negotiations with Stryker. While Pastena—the only truly independent director—sought to include Butler on the Stryker Committee, the Board voted along party lines (4 to 3, with the four Lender-Controlled Directors voting to exclude Butler from the Stryker Committee).

95. While Butler was not a member of the Stryker Committee and had been the point person for Life Spine in the Stryker negotiations to date, the Lender-Controlled Directors only permitted Butler to continue his negotiations with Stryker in writing. However, on multiple occasions, the Lender-Controlled Directors explicitly instructed Butler not to engage with any Stryker personnel, including sales representatives. The Lender-Controlled Directors then employed misdirection to obstruct and hinder negotiations with Stryker.

²² "Stryker" refers to Stryker Spine, which is one of the entities that has agreed to provide financing to Life Spine in order to pay off the Lenders.

96. During a January 10, 2025 Board meeting called by certain of the Lender-Controlled Directors—which was called on shortened notice and was inconsistent with the Lender-Controlled Directors’ own complaints about the scheduling of other meetings on longer notice—the Lender-Controlled Directors presented and approved pre-determined resolutions—formulated without the entire Board’s involvement—that represented conflicts of interest (the “Conflicted Resolutions”).²³

97. One Conflicted Resolution presented and voted in by the Lender-Controlled Directors was to terminate Life Spine’s extremely capable corporate counsel at Quinn Emanuel Urquhart & Sullivan, LLP (“Quinn”)—who had been vigorously defending Life Spine against the Lenders’ misconduct and actions and, as such, were despised by the Lenders—and install lawyers from a much smaller firm, Fox Swibel, where Hachikian’s son is a partner and who signed the engagement letter.

98. Despite the clear conflict of interest, Hachikian did not recuse himself from the vote, and he voted in favor of selecting his son’s law firm. This change of counsel not only financially benefitted Hachikian and his son to the detriment of Life Spine, but it also benefitted the Lenders by ousting Life Spine’s counsel who had ably and competently defended it against the Lenders and replacing Quinn with counsel who has been agreeable with and implemented the Lenders’ directions.

99. The Lender-Controlled Directors did not consult with Life Spine’s General Counsel about the replacement of counsel. Had the Lender-Controlled Directors done so, they would have learned that Quinn, unlike Fox Swibel, was intimately familiar with Life Spine’s operations, the loans with the Lenders (and the Lenders’ unlawful behavior), and had been advising Life Spine in

²³ A true and accurate copy of the Conflicted Resolutions is annexed hereto as **Exhibit “S.”**

connection with strategic alternatives, including the need to potentially sue the Lenders and/or seek bankruptcy protection.

100. Nonetheless, the Lender-Controlled Directors installed Fox Swibel—the law firm where Hachikian’s son works—as outside counsel and provided Fox Swibel with a \$20,000 retainer after Hachikian’s son signed the engagement letter.

101. Following the installation of conflicted corporate counsel from Fox Swibel, negotiations with the Lenders became increasingly obstructive, and it became clear that the company did not have the vigorous representation it had prior to the Lender-Controlled Directors’ decision to install Fox Swibel.

102. A potential bankruptcy filing, which may have been in Life Spine’s best interest, was taken off the table by the Lender-Controlled Directors through removing Quinn and through their board resolutions only because it conflicted with the Lenders’ financial interests and it knee-capped any leverage Life Spine might have vis-a-vis the Lenders. This decision was made in bad faith, prioritizing the Lenders’ self-preservation over Life Spine’s ability to restructure and recover.

103. The second Conflicted Resolution presented by the Lender-Controlled Directors resulted in the installation of Pearson as the Chief Restructuring Officer (“CRO”) of Life Spine. As indicated in his engagement letter (which was not shared with the other Board members until January 16, 2025), Pearson, who was required to commute four hours each way from Kansas to Life Spine’s Illinois headquarters, was to be paid \$9,450 per week for two days’ worth of services, plus out-of-pocket costs. Not only was this appointment self-dealing by Pearson (since he approved his own retention as a Board member) and a breach of his duty of loyalty to Life Spine—

it also created a completely unnecessary set of expenses for Life Spine, particularly for a CRO who was not local to the Chicago area, to the tune of over \$490,000 per year.

104. Initially, in January 2025, Pearson's engagement letter was not approved by the Board. Instead, the Lender-Controlled Directors waited until March 12, 2025—when they removed Butler as Chief Executive Officer—to install Pearson as CRO with the same financial package as referenced in above. Pearson now receives \$9,450 per week, plus his pay package as a member of the Board of Directors. Importantly, cash flow was never considered in making these determinations. The Lender-Controlled Directors' actions are commercially unreasonable and unnecessary, resulting in diminishing cash available to Life Spine, all of which was done at the direction of the Lender-Controlled Directors and to the detriment of Life Spine and Plaintiffs, as majority shareholders.

105. The third Conflicted Resolution presented by the Lender-Controlled Directors created a special committee controlled by Pearson and Hachikian to negotiate a potential sale of Life Spine, which St. Cloud described as "the Lenders' sale process." It is clear that the Lender-Controlled Directors were taking (and continue to take) direction from the Lenders in connection with that "process," which is not in the best interests of Life Spine and its shareholders.

106. Also, on information and belief, the Lender-Controlled Directors have shared Life Spine's attorney-client privileged information with the Lenders, which has harmed Life Spine by weakening Life Spine's negotiating position with the Lenders and potentially exposing Life Spine to greater risks in ongoing litigation.

107. The fourth Conflicted Resolution presented by the Lender-Controlled Directors created another special committee, also controlled by Pearson and Hachikian, to negotiate a forbearance with the very Lenders that appointed them. Pearson and Hachikian are clearly not

disinterested in those negotiations, and thus, their actions in connection with the special committee raise very serious duty-of-loyalty concerns. Moreover, this special committee was also empowered to negotiate a refinancing of Life Spine's debt with the Lenders. Pearson and Hachikian have personal incentives not to refinance the debt, and thus, they are conflicted in negotiating such transactions. Unsurprisingly, Pearson and Hachikian never presented a proposal to refinance Life Spine's debt with the Lenders.

108. The adopted Conflicted Resolutions demonstrate that the Lender-Controlled Directors lack a basic understanding of, or are consciously ignoring, their fiduciary duties under Delaware law and their obligations to Life Spine and its shareholders, as well standard corporate governance under Delaware law.

109. After adopting the Conflicted Resolutions, the Lender-Controlled Directors, with the assistance of Life Spine's new, conflicted, corporate counsel at Fox Swibel, continued the Lenders' bidding by drafting amendments to Life Spine's certificate of incorporation in order to increase the number of shares of common stock authorized to be issued. There was no reason to do this, except in an effort to dilute Plaintiffs' majority shareholder position.

110. In addition to the fiduciary-duty breaches that occurred in adopting the Conflicted Resolutions, the Lender-Controlled Directors have failed and refused to bring viable claims and causes of action against the Lenders for their unlawful and extra-contractual behavior, including for failing to remove Hachikian for his highly inappropriate and destructive behavior.

111. The unlawful and inappropriate conduct perpetrated by the Lender-Controlled Directors has negatively impacted the operations of Life Spine and has caused serious negative issues with senior personnel at Life Spine.

112. Since Hachikian has been installed as a Director, Life Spine employees have reported harassment, bullying, and untoward behavior by Hachikian, including serious claims of sexual discrimination. Certain employees have already filed complaints with the EEOC, and/or left Life Spine as a result of Hachikian's sexual discrimination. Obviously, sexual discrimination by any employee is inappropriate.

113. But it is highly troubling that the Lenders have done nothing to prevent, acknowledge, or even address his sexual discrimination, even though the Lenders placed Hachikian on the Board and the Lenders are aware of Hachikian's pattern of misconduct. It would appear that the Lenders are keeping Hachikian on the Board because they control him and can force him to accept or acquiesce in their demands.

114. Moreover, the Lender-Controlled Directors have not attempted to remove Hachikian from the Board or from his position as "Executive Chairman" for his wildly inappropriate and detrimental conduct—conduct that violates Life Spine's employee guidelines. Hachikian's behavior has resulted in numerous EEOC complaints having been filed. Thus, each day that Hachikian is left to roam the halls of Life Spine is another day in which the company could face another lawsuit from a current or former employee.

115. Hachikian also voted himself in as Executive Chairman and an officer of the Company per the Conflicted Resolutions—a vote in which he was conflicted and should have recused himself. His behavior is creating significant potential employee-related liabilities and negatively impacting employee morale. Continuing such abusive behavior is likely to cause other key employees to leave Life Spine, further harming the company.

116. At a Board meeting held on March 12, 2025 (the "March 12 Board Meeting"), Butler was unceremoniously informed by the Lender-Controlled Directors that his employment as

CEO was being terminated (although he remains a member of the Board). Initially, Hachikian stated that there was no cause for termination; he then stated in substance, “We can make one up.” The concocted cause from Hachikian was that Butler was allegedly soliciting resignations from employees, which is illogical and false. To the contrary, Butler tried to prevent Life Spine employees from resigning.

117. As Plaintiffs are the majority shareholders of Life Spine, it would make absolutely no sense for Butler to cause employees to leave, as Life Spine needs the employees to operate the business which, in turn, would make Plaintiffs’ stock more valuable. Beyond that, Butler never solicited Life Spine employees to resign from Life Spine.

118. Ultimately, the Lender-Controlled Directors terminated Butler’s employment as CEO for no valid reason; instead, they concocted a spurious reason, which had no basis in fact. Richard Mueller was appointed CEO of Life Spine at the March 12 Board Meeting by the Lender-Controlled Directors after they ushered Butler out of Life Spine’s headquarters in front of Life Spine’s employees—many of whom have been with Life Spine and worked with Butler for years.

119. The Lenders and the Lender-Controlled Directors repeatedly demanded that Life Spine reduce or eliminate employee salaries, with intense pressure on Butler and his executive team to forgo their salaries entirely. Yet, immediately following Butler’s termination as CEO, Mueller’s salary was *increased* to nearly \$700,000 per year.

120. Many of the examples of misconduct cited above were at the direction of the Lenders and were designed to benefit the Lenders in their dealings with Life Spine. If the Defendants were truly seeking to maintain the value of Life Spine, let alone increase that value, they never would have terminated Life Spine’s long-standing corporate counsel, or terminated Butler as Chief Executive Officer because, unlike the Defendants, Butler knows how to operate

Life Spine, has key industry relationships, and has been driving Life Spine through these troubled times.

121. Butler not only built and led the Life Spine team, but he also instilled a culture rooted in core values that guided the company's success. The Defendants' actions to disrupt these relationships in pursuit of greed and shortsightedness will not stabilize the company. Those actions have only undermined Life Spine's foundation and its relationships with vendors and customers, and they have diminished the company's chances of overcoming its business challenges.

122. The misconduct perpetrated by the Lenders caused the Board—which was controlled by the Lenders through the Lender-Controlled Directors—to not negotiate a buyout of the debt owed to the Lenders in good faith. If the Board was truly independent, an agreement likely would have been reached that would have paid off the Lenders' outstanding debt. But the Lenders' control of the Board has made that impossible.

123. Butler and other management personnel at Life Spine (excluding the Lender-Controlled Directors) have proposed numerous options to the Lenders, all of which have been dismissed out of hand by the Lenders.

124. Most recently, the Lender-Controlled Directors have refused to negotiate in good faith with Butler and CA with respect to the CA IOI. On March 28, 2025, Butler sent the other members of the Board an e-mail requesting that the March 31 Board Meeting be held so that the CA IOI could be appropriately discussed. Shortly after Butler's e-mail was sent, Omar Faruqi—another Life Spine director—responded and seconded the request for the March 31 Board Meeting.²⁴ Thus, despite the baseless accusations by Hachikian, the scheduling of the March 31

²⁴ A true and accurate copy of Butler's and Omar Faruqi's March 28, 2025 E-mails is annexed hereto as **Exhibit "T."**

Board Meeting complied with Life Spine's Bylaws (as amended), which requires that a special board meeting (i) be called by two directors (it was—by Butler and Faruqi), (ii) be called on at least 24-hours' notice (it was—at least 60 hours of notice was given), and (iii) be subject to a written notice (it was—Butler's March 28 e-mail).

125. Despite the properly scheduled March 31 Board Meeting, only Butler attended; in breach of their duties as Board members, not one of the Lender-Controlled Directors complied with their obligations to attend the March 31 Board Meeting. Fox Swibel apparently advised the Lender-Controlled Directors that Butler had not properly noticed the March 31 Board Meeting. The only informal responses Butler received from any of the Lender-Controlled Directors was (i) an e-mail from Pearson with various questions about the CA IOI, which Butler adequately addressed,²⁵ and (ii) mean-spirited e-mails from Hachikian with no substantive questions, just baseless procedural objections to the March 31 Board Meeting.²⁶ Once again, the conduct of the Lender-Controlled Directors in connection with the March 31 Board Meeting and the CA IOI demonstrate that the Lender-Controlled Directors are not acting for the benefit of Life Spine; they are unmistakably acting for their own benefit and for the benefit of the Lenders.

126. As of the date of this Verified Complaint, the Lender-Controlled Directors have (a) rejected all options to refinance the debt with the Lenders, and (b) refused to engage in good faith negotiations with third-party funding sources to extinguish Life Spine's outstanding debt with the Lenders.

127. And, why have they done this? Because allowing the Lenders' debt to be repaid in full will effectively cause the Lenders to lose control over the Board. While they will still have

²⁵ A true and accurate copy of Pearson's e-mail, with Butler's responses is annexed hereto as **Exhibit "U."**

²⁶ A true and accurate copy of Hachikian's e-mail is annexed hereto as **Exhibit "V."**

the ability to elect two directors because they would continue to be preferred shareholders, the Lenders will lose the ability to elect the two additional directors because the Note Agreement and Forbearance Agreement would no longer be in effect. At such time, the Lenders would only have two directors on the Board, with the remaining directors (except for a truly independent director) being elected by the holders of the common stock of Life Spine (of which, Plaintiffs hold the majority). In other words, the Lenders would be passive shareholders with the right to appoint two directors.

128. Just this week (on March 31, 2025), Pearson and Hachikian noticed the April 4 Board Meeting.²⁷ The purpose of the April 4 Board Meeting is to (i) address a possible forbearance agreement with the Lenders, which upon information and belief would include the granting of releases to the Defendants; this is an obvious attempt to scuddle the relief Plaintiffs seek in the Verified Complaint; (ii) adopting a program to grant stock in Life Spine to certain management and the Lender-Controlled Directors as an obvious attempt to dilute Plaintiffs' interest in Life Spine so that in the event Butler and Life Spine succeed in paying off the Lenders' debt, Plaintiffs will no longer be the majority owners of Life Spine; and (iii) removing Butler as a director and member of the Board, which would completely eliminate Butler's involvement in Life Spine.

129. The Lender-Controlled Defendants' actions have been so egregious that one potential funding source said, in substance, that they had never seen a company representative and/or Board member try harder to prevent a deal.

²⁷ A true and accurate copy of the agenda for the April 4 Board Meeting is annexed hereto as **Exhibit "W."**

130. Another prospective funding source observed that he did not understand how or why the Lender-Controlled Directors would not negotiate a full payoff of Life Spine's debt or why the Lenders were refusing full repayment of their debt.

131. During a May 2023 Board meeting, Life Spine's CFO brought up that the company needed a line of credit, and that Bank of America was interested in working with the company concurrent with its process. Bob Lautz, St. Cloud's managing director (who sat on the Board at the time), said during the Board meeting that Life Spine could talk all they wanted about the Bank of America term sheet, but he was not willing to entertain it. When the Lenders' maturity date was brought up, Lautz stated that this was an issue for Butler and the Lenders.

132. Moreover, while Butler and other management personnel have requested that the Lenders make their own proposal for Life Spine to consider, the Lenders only made a non-starter of an offer recently, which would require payoff of the outstanding debt and payoff of the Lenders' equity position in Life Spine. That non-starter is commercially unreasonable, as the Lenders' equity position is not tied to their debt position, and the Lenders are trying to extract an amount for their equity, at a time when their conduct is diminishing the value of such equity.

133. Prior to that one irrational offer, a representative from St. Cloud said at a Board meeting that Life Spine should "keep guessing until they get it."

134. Life Spine has lined up certain financing (including from Stryker, Bank of America, CA and a third-party lending group) which would guarantee the Lenders a payoff, at par. But the Lenders continue to be unreasonable, arbitrary, and irrational by rejecting these offers.

135. While a sale process for Life Spine's assets or equity has been ongoing for years, there have been no potential purchasers identified, largely because of the uncertainty associated with the Globus litigation and the CIA.

136. Butler and his team have been working non-stop to find a solution to pay off the Lenders and keep Life Spine in business until the CIA concludes and the Globus litigation is resolved (both of which should take place in 2026). However, the Lenders, with the active assistance of the Lender-Controlled Directors, are determined to pursue personal enrichment at the expense of Life Spine. Their actions, which are detrimental to Life Spine, seeking to line their pockets at the expense of Plaintiffs, whose equity value is eroding.

137. After the Lender-Controlled Directors terminated Butler as Chief Executive Officer, on information and belief, Mueller—at the direction of the Lender-Controlled Directors—instructed the Chief Compliance Officer to terminate three employees, all three of whom were Butler’s relatives. Mueller added insult to injury by falsely claiming to Life Spine employees that the three employees voluntarily resigned, which is emblematic of the Lenders’ and the Lender-Controlled Directors pattern and practice of deceptive and bad faith conduct.

138. On information and belief, the current Life Spine management team—acting at the direction of the Lender-Controlled Directors and the Lenders—recently informed staff that previously accrued paid time off was revoked and that any employee who took time off—regardless of the reason—would be terminated. This unlawful policy, implemented in the wake of the three wrongful terminations, is a direct act of intimidation by the Lenders and the Lender-Controlled Directors intended to prevent further dissent, and it will instead seriously impede the company’s operations and even further diminish shareholder value.

139. Recently, St. Cloud has taken another step in its pursuit of obtaining complete control over Life Spine. While St. Cloud has been exercising voting rights since November—four months ago—St. Cloud waited until March 7, 2025, to send Plaintiffs a Notice of UCC Sale.

140. The UCC Sale Notice and the Lenders' actions since then show that the Lenders are not engaging in commercially reasonable behavior:

a. St. Cloud scheduled the public UCC Sale of the Specified Pledged Collateral for March 26, 2025, in Los Angeles, California. Yet Plaintiffs, Life Spine, and the company's operations are located halfway across the country in Illinois.

b. On March 20, 2025, St. Cloud continued the public UCC Sale of the Specified Pledged Collateral to April 9, 2025. Still, St. Cloud has directed that the UCC Sale take place in Los Angeles, California.

c. St. Cloud has called this a public sale, yet the Lenders have not publicly advertised the UCC Sale in any way that would reasonably inform potential buyers.

d. Counsel for both Lenders rejected any suggestion that they should advertise the sale in newspapers.

141. There is absolutely no rational basis to conduct the UCC Sale in California when Life Spine is located in Illinois. This, coupled with a lack of publication notice, makes it clear that St. Cloud is seeking to chill any bidding on the Specified Pledged Collateral, with the hope that no purchaser shows up at the UCC Sale so that the Lenders can obtain the Specified Pledged Collateral at a fire-sale price. Such actions are in no way commercially reasonable.

VII. Derivative and Demand Futility Allegations

142. In the alternative, Plaintiffs bring this action derivatively in the right and for the benefit of Life Spine to redress injuries suffered, and to be suffered, by Life Spine as a direct result of civil conspiracy, breaches of fiduciary duties, aiding and abetting breaches of fiduciary duties, constructive fraud, direct participation, and breach of contract perpetrated by the Lender Controlled Directors and the Lenders.

143. Plaintiffs, as majority shareholders of Life Spine, will adequately and fairly represent the interests of Life Spine in enforcing and prosecuting its rights, claims and causes of action.

144. Plaintiffs have continuously held Life Spine stock at all times relevant to the claims and causes of action asserted herein and are current Life Spine shareholders.

145. As of the date of filing this Complaint, Life Spine's Board consisted of the following directors: (i) Michael Butler and Omar Faruqi, as Life Spine Representatives, and (ii) Thomas Pearson (or Continental Partners), Thomas Goldblatt (or Ravinia capital), Jeanne Goche and Kenneth Hachikian (or Ivy Consulting) as Lender-Controlled Directors.²⁸ Accordingly, the Board was dominated by Lender-Controlled Directors four to two.

146. Plaintiffs did not make any demand on the Life Spine Board to institute this action because such a demand would have been a futile, wasteful, and useless act, for the reasons set forth below.

147. Demand would be futile as to the Lender-Controlled Directors because they served as members of Life Spine's Board at all times relevant to the claims and causes of action asserted in this Complaint and the Lender-Controlled Directors face a substantial likelihood of liability for the misconduct complained of herein. The Lender-Controlled Directors owed Life Spine and Plaintiffs, as the majority shareholders, fiduciary duties of candor, loyalty, and good faith and they breached those duties. As alleged herein, the Lender-Controlled Directors intentionally and knowingly failed to refrain from self-dealing and to undertake their duties with loyalty, good faith, and care. Thus, they breached their fiduciary duties and are not disinterested, and demand is excused as to them.

²⁸ James Pastena resigned as Independent Director on March 11, 2025.

**COUNT I: DECLARATORY JUDGMENT WITH RESPECT TO UCC SALE
(THE LENDERS)**

148. Paragraphs 1 through 147 are incorporated by reference.

149. As stated in 735 ILCS 5/2-701, “[t]he court may, in cases of actual controversy, make binding declarations of rights, having the force of final judgments, whether or not any consequential relief is or could be claimed, including the determination, at the instance of anyone interested in the controversy, of the construction of any statute, municipal ordinance, or other governmental regulation, or of any deed, will, contract or other written instrument, and a declaration of the rights of the parties interested.”

150. Pursuant to the UCC Sale Notice, on March 7, 2025, St. Cloud, as agent, provided notice to Plaintiffs that it would conduct the UCC Sale of the Specified Pledged Collateral in Los Angeles, California. The UCC Sale was subsequently continued to April 9, 2025.

151. Life Spine and Plaintiffs are located in Illinois.

152. At no time did St. Cloud publicly advertise the UCC Sale. And, to date, on information and belief, the Lenders have not undertaken efforts to widely market the UCC Sale to prospective buyers.

153. Pursuant to 810 ILCS 5/9-610, “[e]very aspect of a disposition of collateral, including the method, manner, time, place, and other terms, must be commercially reasonable.”

154. There is no rational basis for the Lenders to conduct the UCC Sale across the country in California when Life Spine and Plaintiffs are located in Illinois.

155. In addition, the Lenders have not sought to sell the Specified Pledged Collateral on a widely recognized market. In fact, to date, there the Lenders have not even published notice of the UCC Sale, which is standard practice for public sales under Article 9 of the UCC, and on

information and belief, the Lenders have not undertaken actions to widely market the Specified Pledged Collateral.

156. It is obvious that St. Cloud, as agent, is seeking to chill any bidding on the Specified Pledged Collateral, with the hope that no purchaser shows up at the UCC Sale. By doing so, the Lenders can obtain for themselves the Specified Pledged Collateral at a fire-sale price.

157. Given the inappropriate location of the UCC Sale—halfway across the country from Life Spine’s headquarters and operations—coupled with a lack of public advertising and marketing to potential buyers—St. Cloud, as agent, has not proceeded with the UCC Sale in a commercial reasonable manner.

158. Plaintiffs seek a declaration that the UCC Sale is not being conducted in a commercially reasonable manner, in violation of Article 9 of the UCC.

159. An actual case or controversy exists between Plaintiffs and the Lenders regarding the commercial reasonableness of the proposed UCC Sale as Plaintiffs believe that the Lenders are not proceeding in a commercially reasonable manner and the Lenders, upon information and belief, dispute that assertion.

160. WHEREFORE, Plaintiffs ask that the Court:

- a. Enter a declaratory judgment in favor of Plaintiffs and against the Lenders;
- b. Enjoin the Lenders from proceeding with the UCC Sale until the claims raised in this Complaint can be adequately addressed by the Court;
- c. Award attorney’s fees and costs to Plaintiffs;
- d. Award such other relief the Court deems appropriate and upon terms that may be just, as the remedies requested herein do not limit the remedies available. *See* 735 ILCS 5/2-604.2.

**COUNT II: CIVIL CONSPIRACY
(ALL DEFENDANTS)**

161. Paragraphs 1 through 160 are incorporated by reference.

162. **Demand Futility**: In the alternative, because the Lender-Controlled Directors and the Lenders did knowingly and willfully conspire and agree among themselves to infiltrate and take over the Life Spine Board and have the Lender-Controlled Defendants take actions to benefit the Lenders at the expense of Life Spine, it is appropriate, given the facts pled in Paragraphs 1 through 160 above, that Plaintiffs be excused from demanding that the Board cease the alleged misconduct. The majority of the Board is conflicted and their alleged conduct, if proven, would not be measured against the business judgment rule because, as alleged herein, they have breached their fiduciary duty of loyalty to Life Spine and Plaintiffs, as the majority shareholders, on numerous occasions and continue to do so. Even if measured against the business judgment rule, the Defendants' misconduct could not possibly fall under the protection of the business judgment rule because their decisions and actions were not made or taken in good faith, with informed judgment, nor in the best interests of Life Spine.

163. Beginning as early as November 7, 2024, the Lender-Controlled Directors and the Lenders did knowingly and willfully conspire and agree among themselves to infiltrate and take over the Life Spine Board and have the Lender-Controlled Directors take actions that were for the benefit of the Lenders and that were not for the benefit of Life Spine.

164. In furtherance of this conspiracy and agreement, the Defendants engaged in the acts as described herein, *see, e.g., supra* ¶¶ 82 – 141, all in a calculated attempt to have the Lenders obtain control over Life Spine and become the sole owners of the company. Such overt acts were committed in furtherance of the conspiracy and agreement, and with the knowledge that such acts were necessary to accomplish the Lenders' goal of taking over complete control of Life Spine.

165. In furtherance of this conspiracy and agreement, the Lender-Controlled Directors acted specifically in their capacity as directors of Life Spine and abused their positions of trust within Life Spine. Therefore, any bar against a finding of a civil conspiracy between a corporation and its agents does not apply. In fact, but for the appointment of the Lender-Controlled Directors as directors of Life Spine, they would not have been able to do the Lenders' bidding and would not have been able to accomplish the goals of the conspiracy; *i.e.*, obtaining complete control of Life Spine.

166. Each and every one of the Defendants were willing and intentional participants in the joint activity.

167. These actions by the Defendants as set forth herein were in violation of the rights of Plaintiffs and committed in furtherance of the conspiracy and agreement.

168. As a direct and proximate result of the conspiracy and agreement to improperly wrestle Life Spine away from Plaintiffs for the sole benefit of the Lenders, Plaintiffs have suffered significant damage.

169. The Defendants' conduct was undertaken with malicious and willful intent.

170. WHEREFORE, Plaintiffs ask that the Court:

- a. Award judgment in favor of Plaintiffs and against the Defendants;
- b. Award damages in favor of Plaintiffs and against the Defendants sufficient to compensate Plaintiffs for the economic and non-economic damages sustained by Plaintiffs as a result of Defendants' wrongful actions as alleged herein;
- c. Award punitive damages against Defendants;
- d. Award attorney's fees and costs to Plaintiffs;

e. Award such other relief the Court deems appropriate and upon terms that may be just, as the remedies requested herein do not limit the remedies available. *See* 735 ILCS 5/2-604.2.

**COUNT III: BREACH OF FIDUCIARY DUTIES
(THE LENDER-CONTROLLED DIRECTORS)**

171. Paragraphs 1 through 170 are incorporated by reference.

172. **Demand Futility:** In the alternative, because the Lender-Controlled Defendants, as appointed directors and members of Life Spine's Board owed fiduciary duties of candor, care, good faith, and loyalty to Life Spine and breached these duties through their misconduct, it is appropriate, given the facts pled in Paragraphs 1 through 170 above, that Plaintiffs be excused from demanding that the Board cease the above-alleged misconduct. The majority of the Board is conflicted and their alleged conduct, if proven, would not be measured against the business judgment rule because they have breached their fiduciary duty of loyalty to Life Spine and Plaintiffs, as the majority shareholders. Even if measured against the business judgment rule, the misconduct by the Lender-Controlled Defendants could not possibly fall under the protection of the business judgment rule because their decisions and actions were not made or taken in good faith, with informed judgment, nor in the best interests of Life Spine.

173. At all times relevant to this litigation, the Lender-Controlled Directors owed fiduciary duties of candor, care, good faith, and loyalty to Life Spine and Plaintiffs, as majority shareholders, because each Lender-Controlled Defendant was appointed a director and a member of Life Spine's Board.

174. The Lender-Controlled Directors willfully, intentionally, knowingly, recklessly, and in bad faith violated their fiduciary duties of candor, care, loyalty, and good faith owed to Life

Spine and Plaintiffs, as the majority shareholders. The Lender-Controlled Directors put their interests and the interests of the Lenders ahead of the interests of Life Spine.

175. The Lender-Controlled Directors breached their fiduciary duties owed to Life Spine by controlling the Board for the benefit of the Lenders and by taking self-interested actions and/or taking actions against the interests of Life Spine, including but not limited to (i) firing Quinn as Life Spine's long standing corporate counsel and replacing it with a much smaller, less experienced law firm where Hachikian's son is a partner; (ii) scheduling emergency Board meetings on shortened notice that were inconsistent with the Lender-Controlled Directors' own complaints about the scheduling of other meetings that were held on longer notice; (iii) creating conflicted subcommittees that did not include persons most knowledgeable about the subject matter to be addressed and/or were designed to advance the Lenders' interests to the detriment of Life Spine and Plaintiffs, as majority shareholders; (iv) adopting predetermined resolutions that approved certain conflicting transactions; (v) allowing Pearson to vote himself in as Life Spine's purported CRO at excessive rates, which clearly constituted self-dealing (even though Pearson's engagement was later not approved); (vi) sharing Life Spine's attorney-client privileged information with the Lenders, which has, among other things, harmed Life Spine by weakening Life Spine's negotiating position with the Lenders; (vii) seeking to adopt a resolution that would increase the number of shares of common stock Life Spine could authorize, with the desired effect of diluting Plaintiffs' majority shareholder position; (viii) failing to bring viable claims against the Lenders; (ix) firing for no valid reason Butler as Life Spine's CEO, (x) adopting a program to grant stock in Life Spine to Mueller and the Lender-Controlled Directors, (xi) wrongfully refusing to attend the validly-called March 31 Board Meeting so that good faith discussions could take place regarding the CA IOI, and/or (xii) unjustly refusing to consider any reasonable refinancing option because allowing

the Lenders' debt to be repaid in full would cause the Lenders to lose control over the Board and result in two of the Lender-Controlled Directors to lose their seats on the Board along with the pay and compensation they are currently receiving from Life Spine.

176. As a result of the breaches of fiduciary duties by the Lender-Controlled Directors, Plaintiffs have been injured financially and irreparably, including through negative impacts to Life Spine's value, profitability and reputation, as well as its ability to operate so that it can (i) earn income, (ii) attract and identify new investments or lenders, and (iii) maintain normal business operations without constant interference by the Lenders.

177. WHEREFORE, Plaintiffs ask that the Court:

a. Award judgment in favor of Plaintiffs and against the Lender-Controlled Directors;

b. Enter an order enjoining the Lender-Controlled Directors from taking actions that solely benefit the Lenders and that do not benefit Life Spine in any practical or useful way, including without limitation, prohibiting the authorization at the April 4 Board Meeting (or thereafter) of (i) any releases to be granted by Life Spine in favor of any of the Defendants that concern, relate to or arise from the claims and causes of action set forth in this Complaint, (ii) a program to grant stock in Life Spine to certain management and the Lender-Controlled Directors, and/or (iii) the removal of Butler as a director and member of the Board;

c. Award damages in favor of Plaintiffs and against the Lender-Controlled Directors sufficient to compensate Plaintiffs for the economic and non-economic damages sustained by Plaintiffs as a result of the wrongful actions alleged to have been taken herein by the Lender-Controlled Directors;

d. Award punitive damages against the Lender-Controlled Directors;

e. Award attorney's fees and costs to Plaintiffs;

f. Award such other relief the Court deems appropriate and upon terms that may be just, as the remedies requested herein do not limit the remedies available. *See* 735 ILCS 5/2-604.2.

**COUNT IV: AIDING AND ABETTING A BREACH OF FIDUCIARY DUTY
(THE LENDERS)**

178. Paragraphs 1 through 177 are incorporated by reference.

179. **Demand Futility:** In the alternative, because the Lenders appointed the Lender-Controlled Defendants to Life Spine's Board and subsequently improperly used them to advance the Lenders' own interests, to the detriment of Life Spine and Plaintiffs, it is appropriate, given the facts pled in Paragraphs 1 through 177 above, that Plaintiffs be excused from demanding that the Board cease the above-alleged misconduct. The majority of the Board is conflicted and their alleged misconduct, if proven, would not be measured against the business judgment rule because they have breached their fiduciary duty of loyalty to Life Spine and Plaintiffs, as the majority shareholders. Even if measured against the business judgment rule, the Lenders' misconduct could not possibly fall under the protection of the business judgment rule because their decisions and actions were not made or taken in good faith, with informed judgment, nor in the best interests of Life Spine.

180. As directors of Life Spine at all relevant times, the Lender-Controlled Directors owed Life Spine and Plaintiffs, as the majority shareholders, fiduciary duties of candor, care, loyalty, and good faith. The Lender-Controlled Directors breached their fiduciary duties to Life Spine and Plaintiffs, as majority shareholders, by engaging in intentional misconduct and knowing violations of their duties to refrain from self-dealing and to undertake their duties with loyalty, good faith and care, all as more fully detailed in Count III above.

181. Such knowing and intentional breaches constituted a wanton and willful disregard of the fiduciary duties owed by Lender-Controlled Directors to Life Spine and Plaintiffs, as majority shareholders, and of the harm Life Spine and Plaintiffs would suffer as a result.

182. At all relevant times, the Lender-Controlled Directors were appointed to the Board by the Lenders and the Lender-Controlled Directors held a blocking position on all actions to be undertaken by the Board. The Lenders continuously used the Lender-Controlled Directors' position on the Board to advance the interests of the Lenders, to the detriment of Life Spine and Plaintiffs, as majority shareholders, including with respect to preventing Plaintiffs and Life Spine from refinancing the debt owed by Life Spine to the Lenders. The Lenders were fully aware of the unlawful conduct and breaches of their fiduciary duties perpetrated by the Lender-Controlled Directors to Life Spine and Plaintiffs, as majority shareholders, and directly and knowingly aided and abetted the breaches of fiduciary duties owed by the Lender-Controlled Directors.

183. WHEREFORE, Plaintiffs ask that the Court:

- a. Award judgment in favor of Plaintiffs and against the Lenders;
- b. Enjoin the Lenders from (i) exerting their influence over and/or expressly directing the Lender-Controlled Directors to take certain actions that are only in the Lenders' interests and contrary to Life Spine's and Plaintiffs' interests, and (ii) proceeding with the UCC Sale until the claims raised in this Complaint can be adequately addressed by the Court;
- c. Award damages in favor of Plaintiffs and against the Lenders sufficient to compensate Plaintiffs for the economic and non-economic damages sustained by Plaintiffs as a result of the Lenders aiding and abetting the wrongful actions of the Lender-Controlled Directors;
- d. Award punitive damages against the Lenders;
- e. Award attorney's fees and costs to Plaintiffs;

f. Award such other relief the Court deems appropriate and upon terms that may be just, as the remedies requested herein do not limit the remedies available. *See* 735 ILCS 5/2-604.2.

**COUNT V: CONSTRUCTIVE FRAUD
(ALL DEFENDANTS)**

184. Paragraphs 1 through 183 are incorporated by reference.

185. **Demand Futility:** In the alternative, because the Lender-Controlled Defendants knowingly, recklessly, and in bad faith violated their fiduciary duties to Life Spine and Plaintiffs, in part by committing acts to deceive Life Spine and Plaintiffs, all the while Lenders aided and abetted this improper conduct, it is appropriate, given the facts pled in Paragraphs 1 through 183 above, that Plaintiffs be excused from demanding that the Board cease the above-alleged misconduct. The majority of the Board is conflicted and their alleged conduct, if proven, would not be measured against the business judgment rule because, as alleged above, they have breached their fiduciary duty of loyalty to Life Spine and Plaintiffs, as the majority shareholders. Even if measured against the business judgment rule, the Defendants' misconduct could not possibly fall under the protection of the business judgment rule because their decisions and actions were not made or taken in good faith, with informed judgment, nor in the best interests of Life Spine.

186. At all times relevant to this litigation, the Lender-Controlled Directors, each as directors and members of Life Spine's Board of Directors owed fiduciary duties of candor, care, good faith, and loyalty to Life Spine and Plaintiffs, as majority shareholders.

187. The Lender-Controlled Directors knowingly, recklessly, and in bad faith violated their fiduciary duties of candor, care, loyalty, and good faith owed to Life Spine and Plaintiffs by putting the interests of the Lenders ahead of the interests of Life Spine's and Plaintiffs' interests.

188. The Lender-Controlled Directors engaged in conduct that was calculated to deceive Life Spine and Plaintiffs, including acts, omissions, and concealments by the Lender-Controlled Directors in breach of their legal and equitable duties.

189. The Lenders aided and abetted the improper conduct perpetrated by the Lender-Controlled Directors.

190. As a result of the constructive fraud committed by the Lender-Controlled Directors, aided and abetted by the Lenders, Plaintiffs suffered damages and irreparable harm, including through negative impacts to Life Spine's value, profitability and reputation, as well as its ability to operate so that it can (i) earn income, (ii) attract and identify new investments or lenders, and (iii) maintain normal business operations without constant interference by the Lenders.

191. The acts, omissions, and concealments by the Defendants were willful and intentional.

192. WHEREFORE, Plaintiffs ask that the Court:

- a. Award judgment in favor of Plaintiffs and against the Defendants;
- b. Award damages in favor of Plaintiffs and against the Defendants sufficient to compensate Plaintiffs for the economic and non-economic damages sustained by Plaintiffs as a result of the Defendants' wrongful actions as alleged herein;
- c. Award punitive damages against the Defendants;
- d. Award attorney's fees and costs to Plaintiffs;
- e. Award such other relief the Court deems appropriate and upon terms that may be just, as the remedies requested herein do not limit the remedies available. *See* 735 ILCS 5/2-604.2.

**COUNT VI: DIRECT PARTICIPANT LIABILITY
(THE LENDERS)**

193. Paragraphs 1 through 192 are incorporated by reference.

194. **Demand Futility:** In the alternative, because the Lenders appointed the Lender-Controlled Defendants to Life Spine's Board and subsequently improperly used them to advance the Lenders' own interests by directly participating in Life Spine Board decisions, to the detriment of Life Spine and Plaintiffs, it is appropriate, given the facts pled in Paragraphs 1 through 192 above, that Plaintiffs be excused from demanding that the Board cease the above-alleged misconduct. The majority of the Board is conflicted and their alleged conduct, if proven, would not be measured against the business judgment rule because they have breached their fiduciary duty of loyalty to Life Spine and Plaintiffs, as the majority shareholders. Even if measured against the business judgment rule, the decisions by the lender-controlled Board could not possibly fall under the protection of the business judgment rule because their decisions and actions were not made or taken in good faith, with informed judgment, nor in the best interests of Life Spine.

195. At all times since the Lender-Controlled Directors became directors and members of the Board, they received obvious instructions and overt direction from the Lenders in connection with numerous matters that were to be addressed by the Board, including, without limitation (i) who should be a director and member of the Board; (ii) which counsel should represent Life Spine in corporate matters; (iii) who should be an officer of Life Spine; and (iv) negotiations with the Lenders regarding a possible refinancing, forbearance or buy out.

196. The Lenders were actively involved in the decisions made by the Board, and the Lenders actively instructed and directed the Lender-Controlled Directors to make decisions that benefitted the Lenders and did not benefit, or were not in the best interests, of Life Spine.

197. Indeed, the Lenders, through their control of the Lender-Controlled Directors and voting of Plaintiffs' shares to control the Lender-Controlled Directors' behavior and decision-making, prevented Plaintiffs and Life Spine from effectuating proposed transactions that would have refinanced the debt owed by Life Spine to the Lenders. Based on their voting of Plaintiffs' shares, the Lenders could replace the Lender-Controlled Directors for any reason, including taking actions adverse to the Lenders. By unjustly refusing to consider any reasonable refinancing option allows the Lenders to remain in control of the Board because if their debt was repaid in full, the Lenders would lose the ability to elect two of the four directors that they now control, and two of the Lender-Controlled Directors would no longer be members of the Board and receive the pay and other compensation they are currently receiving from Life Spine.

198. The Lenders knew or should have known that their direct participation in Life Spine's Board decisions would improperly benefit the Lenders and would be at the expense of Life Spine and Plaintiffs, as majority shareholders.

199. It was foreseeable that the Lenders' improper actions would cause injury to Life Spine and Plaintiffs, as the majority shareholders, and such improper action did cause injury to Life Spine and Plaintiffs, as majority shareholders.

200. WHEREFORE Plaintiffs asks that the Court:

- a. Award judgment in favor of Plaintiffs and against the Lenders;
- b. Award damages in favor of Plaintiffs and against the Lenders sufficient to compensate Plaintiffs for the economic and non-economic damages sustained by Plaintiffs as a result of the Lenders' wrongful actions as alleged herein;
- c. Award punitive damages against the Lenders;
- d. Award attorney's fees and costs to Plaintiffs;

e. Award such other relief the Court deems appropriate and upon terms that may be just, as the remedies requested herein do not limit the remedies available. *See* 735 ILCS 5/2-604.2.

**COUNT VII: BREACH OF CONTRACT
(THE LENDERS)**

201. Paragraphs 1 through 200 are incorporated by reference.

202. **Demand Futility:** In the alternative, because the Lender-Controlled Directors, as appointed directors and members of Life Spine's Board and as officers of Life Spine, owed fiduciary duties of candor, care, good faith, and loyalty to Life Spine and breached these duties through their misconduct, it is appropriate, given the facts pled in Paragraphs 1 through 200 above, that Plaintiffs be excused from demanding that the Board cease the above-alleged misconduct. The majority of the Board is conflicted and their alleged conduct, if proven, would not be measured against the business judgment rule because they have breached their fiduciary duty of loyalty to Life Spine and Plaintiffs, as the majority shareholders. Even if measured against the business judgment rule, the misconduct by the Lender-Controlled Defendants could not possibly fall under the protection of the business judgment rule because their decisions and actions were not made or taken in good faith, with informed judgment, nor in the best interests of Life Spine.

203. At all times relevant to this litigation, the Lenders and Life Spine were parties to valid and enforceable loan agreements, including the Note Agreement, the Pledge Agreements and related documents.

204. Like all contracts in Illinois, the Note Agreement, the Pledge Agreements and the other loan agreements are subject to an implied covenant of good faith and fair dealing requiring that the parties act in good faith and with reasonable efforts to perform their contractual duties—both explicit and fairly implied—and not to impair the rights of the other party to receive the rights,

benefits, and reasonable expectations under the loan agreements. This includes the covenant that the Lenders act honestly, fairly and in good faith.

205. The Lenders breached the Note Agreement, the Pledge Agreements and the other loan agreements, including the implied covenant of good faith and fair dealing, by engaging in intentional misconduct and knowing violations of the loan documents. Specifically, among other things, the Lenders caused the Board to take self-interested actions and/or take actions against the interests of Life Spine—for the benefit of the Lenders—including but not limited to (i) firing Quinn as Life Spine’s long standing corporate counsel and replacing it with a much smaller, less experienced law firm where Hachikian’s son is a partner; (ii) scheduling emergency Board meetings on shortened notice that were inconsistent with the Lender-Controlled Directors’ own complaints about the scheduling of other meetings that were held on longer notice; (iii) creating conflicted subcommittees that did not include persons most knowledgeable about the subject matter to be addressed and/or where designed to advance the Lenders’ interests to the detriment of Life Spine and Plaintiffs, as majority shareholders; (iv) adopting predetermined resolutions that approved certain conflicting transactions; (v) allowing Pearson to vote himself in as Life Spine’s purported CRO at excessive rates, which clearly constituted self-dealing (even though Pearson engagement was later not approved); (vi) sharing Life Spine’s attorney-client privileged information with the Lenders, which has, among other things, harmed Life Spine by weakening Life Spine’s negotiating position with the Lenders; (vii) seeking to adopt a resolution that would increase the number of shares of common stock Life Spine could authorize, with the desired effect of diluting Plaintiffs’ majority shareholder position; (viii) failing to bring viable claims against the Lenders; (ix) firing for no valid reason Butler as Life Spine’s CEO, (x) wrongfully refusing to attend the validly-called March 31 Board Meeting so that good faith discussions could take place

regarding the CA IOI, and/or (xii) unjustly refusing to consider any reasonable refinancing option because allowing the Lenders' debt to be repaid in full would cause the Lenders to lose control over the Board, and two of the Lender-Controlled Directors would no longer be members of the Board and receive the pay and other compensation they are currently receiving from Life Spine. These wrongful actions, among other things, paved the way for the Lenders to seek to unfairly sell Plaintiffs' majority shares of stock in Life Spine through an improper UCC Sale.

206. As a result of their control of the Board, the Lenders prohibited Life Spine from formulating and effectuating transactions that would have paid the Lenders in full and obviated the need for the Lenders to seek to sell Plaintiffs' majority shares in Life Spine. By doing so, the Lenders were not acting in good faith and were not dealing fairly and honestly with Life Spine and Plaintiffs, as the majority shareholders.

207. As a result of the Lenders' breaches of contract, Plaintiffs have been injured financially and irreparably, including (i) by the Lenders seeking to cause the unfair sale of Plaintiffs' majority shares of stock, and (ii) by negatively impacting Life Spine's value, profitability and reputation, as well as its ability to operate so that it can (i) earn income, (ii) attract and identify new investments or lenders, and (iii) maintain normal business operations without the constant interference by the Lenders.

208. WHEREFORE, Plaintiffs ask that the Court:

- a. Award judgment in favor of Plaintiffs and against the Lenders;
- b. Award damages in favor of Plaintiffs and against the Lenders to compensate Plaintiffs for the economic and non-economic damages sustained by Plaintiffs as a result of the wrongful actions alleged to have been taken herein by the Lenders;
- c. Award attorney's fees and costs to Plaintiffs;

d. Award such other relief the Court deems appropriate and upon terms that may be just, as the remedies requested herein do not limit the remedies available. *See* 735 ILCS 5/2-604.2.

Dated: April 1, 2025

/s/ Patrick M. Otlewski

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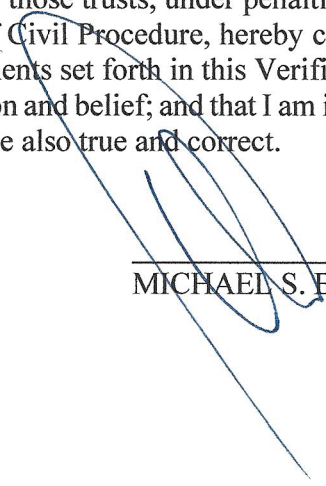
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Attorneys for Plaintiffs

VERIFICATION

I, Michael S. Butler, in my individual capacity and on behalf of Michael S. Butler Beneficiary Grantor Trust dated March 31, 2015, and the Michael S. Butler Power of Appointment Trust, in my capacity as lawful representative for those trusts, under penalties as provided by law pursuant to Section 1-109 of the Illinois Code of Civil Procedure, hereby certify that I have read the foregoing Verified Complaint; that the statements set forth in this Verified Complaint are true and correct, except for those alleged on information and belief; and that I am informed and I believe that the facts alleged on information and belief are also true and correct.



MICHAEL S. BUTLER