



1 **Patricia A. Law (State Bar No. 163661)**  
2 **LAW OFFICES OF PATRICIA A. LAW**  
3 4371 Latham Street  
4 Suite 205  
5 Riverside, CA 92501  
6 (951) 683-8320  
7 FAX No.: (951) 683-8321

8 Attorneys for Plaintiffs

9 UNITED STATES DISTRICT COURT  
10 CENTRAL DISTRICT OF CALIFORNIA - WESTERN DIVISION

11 GILBERTO CARLOS GUZMAN;  
12 VERONICA GUZMAN,

13 Plaintiffs,

14 vs.

15 X-SPINE SYSTEMS, INC; SPINAL  
16 SOLUTIONS LLC; and DOES 1-200,  
17 inclusive,

18 Defendants.

CASE NO. 5:12-CV-0422-DMG-OP

Assigned to Hon. Dolly M. Gee  
Courtroom: 7

**SECOND AMENDED  
COMPLAINT FOR DAMAGES**

Complaint Filed: November 1, 2011  
Case Removed: March 21, 2012  
RSC Case No.: RIC 1117713

19  
20 **FIRST CAUSE OF ACTION**

21 **(Product Liability - Strict Liability)**

22 Plaintiff, Gilberto Carlos Guzman, complains of Defendants, X-  
23 Spine Systems, Inc., Spinal Solutions LLC and DOES 1 - 50 for a cause of action  
24 for Strict Liability as follows:

25 1. Plaintiff is ignorant of the true names and/or capacities, whether  
26 individual, partnership, limited partnership, corporate, or otherwise, of the  
27 Defendants sued herein as Does 1 through 200, inclusive, and each of them, and  
28 therefore sues such Defendants by such fictitious names. Plaintiff is informed and

1 believes and thereon alleges that each of said Defendants in some manner  
2 negligently, carelessly, recklessly, willfully, or intentionally, proximately caused or  
3 contributed to the injuries and damages hereinafter alleged. When the true names  
4 and/or capacities of said Defendants are ascertained, Plaintiff will seek leave to  
5 amend this Complaint to insert the same herein with appropriate charging  
6 allegations.

7           2. At all times herein mentioned, each of the Defendants was the  
8 agent, servant, employee, ostensible agent, joint-venturer, and/or co-conspirator of  
9 each of the remaining Defendants and was at all times acting within the course and  
10 scope of said agency, servitude, employment, joint-venture, and/or conspiracy.  
11 The acts of each Defendant who was acting as an agent, servant, or employee were  
12 done at the direction, or with the authorization or ratification of each Defendant  
13 who was acting as a principal, master, or employer. As to each Defendant herein  
14 which is a corporation, the aforesaid acts of direction, authorization, and  
15 ratification were carried out by officers, directors, or agents of said corporate  
16 Defendants possessing managerial authority.

17           3. At all times herein mentioned, Defendant, X SPINE SYSTEMS,  
18 INC., a corporation, whose principal place of business is 452 Alexandersville Rd.,  
19 Miamisburg, Ohio, was a corporation duly created, existing, and doing business  
20 pursuant to the laws of the State of Ohio and doing substantial business in the State  
21 of California, thereby invoking the benefits and protection of the laws of the State  
22 of California.

23           4. At all times herein mentioned, Defendant, SPINAL SOLUTIONS,  
24 LLC, a corporation, whose principal place of business is 26157 Jefferson Avenue,  
25 Murietta, California, was a corporation duly created, existing, and doing business  
26 pursuant to the laws of the State of California, and doing substantial business in the  
27 State of California, thereby invoking the benefits and protection of the laws of the  
28 State of California.

1           5. At all times herein mentioned, Plaintiffs, GILBERTO CARLOS  
2 GUZMAN; VERONICA GUZMAN, were and are presently residents of the  
3 County of San Bernardino, State of California.

4           6. That on a date prior to June 30, 2011, Defendants, and each of  
5 them, manufactured, designed, engineered, sold, tested, owned, controlled,  
6 marketed, advertised, flooded the market, solicited health care professionals,  
7 distributed, bailed, assembled, and altered certain spinal implants, namely the  
8 Spider Cervical Plating System, generally used as a spinal fixation for spinal  
9 surgery patients, so that they existed in a defective condition, imminently dangerous  
10 to the life, safety, health, and welfare of those who would foreseeably use them, in  
11 that they lacked adequate and sufficient locking mechanisms or other safety devices  
12 and designs so that the screws would not come loose from the plates and endanger  
13 or injure the patients.

14           7. Defendants, and each of them, had reason to know of the aforesaid  
15 defects, of their duty to disclose the defects directly to the user through written  
16 warnings and product literature and to medical practitioners who utilize said  
17 systems. Defendants, and each of them, had the knowledge and opportunity to fix  
18 said defects and to warn both the patients and their physicians of the possible  
19 dangers the systems posed, and failed to do so within a reasonable period of time.  
20 That on or before February 16, 2009, Plaintiff had the system described above  
21 installed into his cervical spine by Dr. Sunny Uppal, a board certified orthopedic  
22 surgeon who was very well experienced in the placement of said systems. The  
23 Spider Cervical Plating System failed, causing injury to the Plaintiff, and had to be  
24 removed on October 29, 2010 at which time another Spider Cervical Plating  
25 System was installed. That system failed, causing severe injury to the Plaintiff, and  
26 had to be removed on June 30, 2011.

27           8. As a direct and proximate result of the product defects as  
28 aforesaid, Plaintiff was caused to and did suffer severe personal injuries, pain and

1 suffering, mental anguish, and emotional distress all to his general damage in an  
2 amount within the jurisdiction of this Court.

3           9. As a direct and proximate result of the product defects as  
4 aforesaid, Plaintiff has necessarily incurred liability for medical aid and attention,  
5 hospitalization, x-rays, nursing care, and drugs for the proper care and treatment of  
6 Plaintiff's said injuries and Plaintiff will continue to incur such liability for an  
7 indefinite time in the future, all to Plaintiff's special damage in amounts presently  
8 unascertained, and Plaintiff prays leave that when said amounts are ascertained,  
9 Plaintiff may be permitted to amend to insert the same herein with appropriate  
10 allegations.

11           10. As a direct and proximate result of the product defects as  
12 aforesaid, Plaintiff has necessarily suffered loss of earnings, and Plaintiff will  
13 continue to suffer such loss for an indefinite time in the future, and Plaintiff's  
14 earning capacity in the future has been greatly reduced, all to Plaintiff's further  
15 special damage in amounts presently unascertained, and Plaintiff prays leave that  
16 when the said amounts are ascertained, Plaintiff may be permitted to amend to  
17 insert the same herein with appropriate allegations.

18           11. That Defendants, and each of them, knew of the defective  
19 condition of the X Spine Systems before any such product was placed into the  
20 stream of commerce and ultimately sold to the public, and knew or had reason to  
21 know of the danger to life, limb, health and safety such defective condition posed  
22 to foreseeable users, and in conscious disregard for the safety of said foreseeable  
23 users, Defendants sold the product without remedying the defect, and that  
24 Defendants purposely did not warn of the defect in an attempt to conceal it from  
25 foreseeable users. Defendants, and each of them, failed to warn of the defect or  
26 remedy the defect because it would diminish their expected profit from the  
27 marketing sale of the product. Further, Plaintiff is informed and believe and  
28 thereon allege that many if not all of the lot or production that included the subject

1 product had the same defect, thereby making it impossible for Defendants not to  
2 have known of the defect before this incident. The conduct of Defendants, and  
3 each of them, as aforesaid further constituted oppression and malice in that  
4 Defendants knew that Plaintiff's doctor would rely upon their misrepresentations  
5 about the safety of the product, and thereby deprive the Plaintiff of the right to safe  
6 implantable devices, and subject Plaintiff to the imminent risk of death or serious  
7 bodily injury. Plaintiff is informed and believes and thereon alleges that the acts of  
8 oppression and malice heretofore alleged were done by directors, supervisors and  
9 or managing agents of Defendants, and each of them. Plaintiff is further informed  
10 and believes and thereon alleges that Defendants, and each of them, further  
11 directed, authorized and/or ratified the aforesaid acts of oppression and malice. As  
12 a direct and proximate result of the oppressive and malicious conduct engaged in  
13 by Defendants in conscious disregard of the rights and safety of Plaintiff, Plaintiff is  
14 entitled to an award of damages for the sake of punishing the conduct of said  
15 Defendants and to make an example of said conduct to deter future similar conduct.

16 **SECOND CAUSE OF ACTION**

17 **(Products Liability - Negligence)**

18 Plaintiff, Gilberto Carlos Guzman complains of Defendants,  
19 Defendants, X-Spine Systems, Inc., Spinal Solutions LLC and DOES 50-100, and  
20 for a cause of action for Negligence, allege:

21 12. Plaintiff refers to each of the allegations set forth in paragraphs 1  
22 through 11 of the First Cause of Action, and by such reference incorporate the same  
23 herein as though set forth in detail.

24 13. That on a date prior to June 30, 2011, Defendants, and each of  
25 them, manufactured, designed, engineered, sold, tested, owned, controlled,  
26 marketed, advertised, flooded the market, solicited health care professionals,  
27 distributed, bailed, assembled, and altered certain spinal implants, namely the  
28 Spider Cervical Plating System, generally used as a spinal fixation for spinal

1 surgery patients, so that they existed in a defective condition, imminently dangerous  
2 to the life, safety, health, and welfare of those who would foreseeably use them, in  
3 that they lacked adequate and sufficient locking mechanisms or other safety devices  
4 and designs so that the screws would not come loose from the plates and endanger  
5 or injure the patients.

6           14. Defendants, and each of them, had reason to know of the  
7 aforesaid defects, of their duty to disclose the defects directly to the user through  
8 written warnings and product literature and to medical practitioners who utilize said  
9 systems. Defendants, and each of them, had the knowledge and opportunity to fix  
10 said defects and to warn both the patients and their physicians of the possible  
11 dangers the systems posed, and failed to do so within a reasonable period of time.  
12 That on or before February 16, 2009, Plaintiff had the systems described above  
13 installed into his cervical spine by Dr. Sunny Uppal, a board certified orthopedic  
14 surgeon who was very well experienced in the placement of said systems. The  
15 Spider Cervical Plating System failed, causing injury to the Plaintiff, and had to be  
16 removed on October 29, 2010 at which time another Spider Cervical Plating  
17 System was installed. That system failed, causing severe injury to the Plaintiff,  
18 and had to be removed on June 30, 2011.

19           15. As a direct and proximate result of the negligence as aforesaid,  
20 Plaintiff was caused to and did suffer severe personal injuries, pain and suffering,  
21 mental anguish, and emotional distress all to his general damage in an amount  
22 within the jurisdiction of this Court.

23           16. As a direct and proximate result of the negligence as aforesaid,  
24 Plaintiff has necessarily incurred liability for medical aid and attention,  
25 hospitalization, x-rays, nursing care, and drugs for the proper care and treatment of  
26 Plaintiff's said injuries and Plaintiff will continue to incur such liability for an  
27 indefinite time in the future, all to Plaintiff's special damage in amounts presently  
28 unascertained, and Plaintiff prays leave that when said amounts are ascertained,

1 Plaintiff may be permitted to amend to insert the same herein with appropriate  
2 allegations.

3 17. As a direct and proximate result of the negligence as aforesaid,  
4 Plaintiff has necessarily suffered loss of earnings, and Plaintiff will continue to  
5 suffer such loss for an indefinite time in the future, and Plaintiff's earning capacity  
6 in the future has been greatly reduced, all to Plaintiff's further special damage in  
7 amounts presently unascertained, and Plaintiff prays leave that when the said  
8 amounts are ascertained, Plaintiff may be permitted to amend to insert the same  
9 herein with appropriate allegations.

10 **THIRD CAUSE OF ACTION**

11 **(Products Liability - Breach of Warranty)**

12 Plaintiff, Gilberto Carlos Guzman complains of Defendants,  
13 Defendants, X-Spine Systems, Inc., Spinal Solutions LLC and DOES 50-100, and  
14 for a cause of action for Breach of express and implied Warranty, allege:

15 18. Plaintiff refers to each of the allegations set forth in paragraphs 1  
16 through 11 of the First Cause of Action, 13 through 17 of the Second Cause of  
17 Action, and by such reference incorporate the same herein as though set forth in  
18 detail.

19 19. That on a date prior to June 30, 2011, Defendants, and each of  
20 them, expressly warranted and represented, orally and/or in writing, that the  
21 aforementioned products were free from defects and in all respects safe for use in  
22 the manner for which it was manufactured, designed, engineered, sold, tested,  
23 owned, controlled, marketed, advertised, flooded the market, solicited health care  
24 professionals, bailed, assembled, and altered by said Defendants, and each of them.  
25 Further, said Defendants, and each of them, warranted and represented, orally  
26 and/or in writing, that said products were of merchantable quality and would be  
27 safe to handle and use, and would be fit for its intended purpose, which purpose  
28 was known to said Defendants. Plaintiff is informed and believes and thereon

1 alleges that each of said warranties and warranty representations were made at the  
2 time said products were marketed, distributed, sold, bailed, or otherwise transferred  
3 into Plaintiff's doctor's possession. That they justifiably relied on, and were the  
4 beneficiary of said warranties and warranty representations when utilizing the  
5 aforesaid products.

6 20. That said express warranties and warranty representations were  
7 untrue and breached by said Defendants, and each of them, in that the products  
8 were not of merchantable quality, nor were they fit for their intended use in that  
9 they lacked adequate and sufficient locking mechanisms, or other safety designs or  
10 devices, warnings, inserts, disclaimers, or other informational literature either to the  
11 surgeon with instructions to pass the information on to the user or directly to the  
12 user of said medication, thereby rendering them unsafe and unfit for use.

13 Defendants, and each of them, had reason to know of the aforesaid defects, and of  
14 the possible defects of the products and failed to provide adequate and sufficient  
15 warnings concerning the defects to those who would foreseeably use the products,  
16 having a reasonable opportunity to do so. That as a direct and proximate result of  
17 the breach of express warranties and warranty representations by said Defendants,  
18 and each of them, as aforesaid, and as a direct and proximate result of Decedent's  
19 justifiable reliance thereon, Plaintiff had the X Spine systems described above  
20 installed into his cervical spine, both of which failed and caused injury to the  
21 Plaintiff as aforementioned and thereafter had to be removed.

22 21. As a direct and proximate result of the breach of express and  
23 implied warranties by Defendants, and each of them, as aforesaid, Plaintiff was  
24 caused to and did suffer severe personal injuries, pain and suffering, mental  
25 anguish, and emotional distress all to his general damage in an amount within the  
26 jurisdiction of this Court.

27 22. As a direct and proximate result of the breach of express and  
28 implied warranties as aforesaid, Plaintiff has necessarily incurred liability for



1 medical aid and attention, hospitalization, x-rays, nursing care, and drugs for the  
2 proper care and treatment of Plaintiff's said injuries and Plaintiff will continue to  
3 incur such liability for an indefinite time in the future, all to Plaintiff's special  
4 damage in amounts presently unascertained, and Plaintiff prays leave that when  
5 said amounts are ascertained, Plaintiff may be permitted to amend to insert the  
6 same herein with appropriate allegations.

7 23. As a direct and proximate result of the breach of express and  
8 implied warranties as aforesaid, Plaintiff has necessarily suffered loss of earnings,  
9 and Plaintiff will continue to suffer such loss for an indefinite time in the future, and  
10 Plaintiff's earning capacity in the future has been greatly reduced, all to Plaintiff's  
11 further special damage in amounts presently unascertained, and Plaintiff prays leave  
12 that when the said amounts are ascertained, Plaintiff may be permitted to amend to  
13 insert the same herein with appropriate allegations.

14 **FOURTH CAUSE OF ACTION**

15 **(Loss of Consortium)**

16 Plaintiff, Veronica Guzman, complains of Defendants, Defendants, X-  
17 Spine Systems, Inc., Spinal Solutions LLC and each of them, and for a cause of  
18 action for loss of consortium alleges:

19 24. Plaintiff refers to each of the allegations contained in Paragraphs  
20 1 through 23 of this complaint and by such reference incorporates the same herein  
21 as though set forth in detail.

22 25. Plaintiff, Veronica Guzman, and Plaintiff's spouse, Gilberto  
23 Carlos Guzman, are now and, at all times relevant to this action, were husband and  
24 wife.

25 26. Prior to the physical injuries sustained by Plaintiff, Gilberto  
26 Carlos Guzman, said Plaintiff was able to and did perform his duties as a spouse.  
27 Subsequent to the injuries, and as a proximate result thereof, said Plaintiff has been  
28 unable to perform the necessary duties as a spouse, and the work and services

1 usually performed in the care, maintenance, and management of the family home,  
2 and said Plaintiff will be unable to perform such work, services and duties in the  
3 future. By reason thereof, Plaintiff, Veronica Guzman, has been permanently  
4 deprived, and will be deprived of the consortium of his spouse, including the  
5 performance of her spouse's necessary duties, all to her damage in an amount as yet  
6 unascertained, and Plaintiff will seek leave to amend this Complaint to insert the  
7 same when it has been ascertained.

8 WHEREFORE, Plaintiffs, pray for judgment against Defendants, and  
9 each of them, for general damages, in an amount within the jurisdiction of this  
10 Court, for special damages according to proof, for punitive damages on the first  
11 cause of action for Strict Liability, for costs of suit, and for such further relief as the  
12 Court may deem just and proper.

13 Dated: 9/14/12

LAW OFFICES OF PATRICIA A. LAW

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15 BY:   
16 PATRICIA A. LAW  
17 Attorneys for Plaintiffs  
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