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FEDERAL COURT

B E T W E E N:

VARCAN INC. O/A KAIN LABS

Plaintiff

- and -

WALLENSTEIN FEED & SUPPLY LTD.

Defendant

STATEMENT OF CLAIM

TO THE DEFENDANT:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or a solicitor acting for you are required to prepare a statement of defence in Form 171B prescribed by the *Federal Courts Rules*, serve it on the Plaintiff's solicitor or, if the Plaintiff does not have a solicitor, serve it on the Plaintiff, and file it, with proof of service, at a local office of this Court:

WITHIN 30 DAYS after the day on which this statement of claim is served on you, if you are served in Canada or the United States; or

WITHIN 60 DAYS after the day on which this statement of claim is served on you, if you are served outside Canada and the United States.

TEN ADDITIONAL DAYS are provided for the filing and service of the statement of defence if you or a solicitor acting for you serves and files a notice of intention to respond in Form 204.1 prescribed by the *Federal Courts Rules*.

Copies of the *Federal Courts Rules*, information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO DEFEND THIS PROCEEDING, judgment may be given against you in your absence and without further notice to you.

Date: January 30, 2025

Issued By: _____

Address of 180 Queen Street West,
local office: Suite 200
Toronto, Ontario
M5V 3L6

TO: **THE ADMINISTRATOR**
Federal Court
180 Queen St. West
Suite 200
Toronto, Ontario
M5V 3L6

AND TO: **Wallenstein Feed & Supply Ltd.**
7307 Highway 86
Wallenstein, Ontario
N0B 2S0

CLAIM

1. The Plaintiff (“**KAIN Labs**”) claims:
 - (a) a declaration that the Defendant has infringed KAIN Labs’s copyright in the KAIN Labs Software (as described herein) contrary to sections 3 and 27(1) of the *Copyright Act*, RSC 1985, c C-42 (“*Copyright Act*”);
 - (b) an *interim*, interlocutory, and permanent injunction restraining the Defendant, by itself, its directors, officers, employees, servants, agents, licensees, successors, assigns, related or affiliated companies, or otherwise, and all those in privity with or under the control of the Defendant from, directly or indirectly, doing any of the acts described in paragraphs 1(a) above, or any other acts in relation to the KAIN Labs Software that violate the *Copyright Act*;
 - (c) a further “wide injunction” pursuant to section 39.1 of the *Copyright Act* enjoining the same parties noted in paragraph 1(b) above from infringing the Plaintiff’s copyright in any other works that the Defendant is likely to infringe, as may be evidenced to the Court’s satisfaction;

- (d) an interlocutory and final Order requiring the Defendant to deliver to the Plaintiff or destroy under oath all infringing copies of the KAIN Labs Software, in whatever form or media under the Defendant's direct or indirect control, including without limitation all executable files as well as all associated source and object code, and including whether or not all such copies are stored locally on servers or other systems owned or possessed by the Defendant or stored 'in the cloud' on third party servers under the Defendant's direction or authorization, as if all such copies were the Plaintiff's property, pursuant to section 38(1) of the *Copyright Act*;
- (e) an award of damages in a sum not less than \$2,000,000 for the Defendant's noted infringements, pursuant to sections 34 and 35 of the *Copyright Act*;
- (f) in addition to the damages claimed in paragraph 1(e), an accounting of the Defendant's profits from its infringements in a sum not less than \$10,000,000, pursuant to sections 34 and 35 of the *Copyright Act*;
- (g) in the alternative to the damages and profits claimed in paragraphs 1(e) and (f) above, and only if elected by the Plaintiff at any time before final judgment is rendered, statutory damages for each work infringed by the Defendant as the Court considers just pursuant to section 38.1 of the *Copyright Act*;

- (h) punitive and exemplary damages in the sum of \$1,000,000 for the Defendant's willful and highhanded infringements of the Plaintiff's copyrights as described herein;
- (i) pre-judgment and post-judgment interest in accordance with the *Federal Courts Act*, RSC 1985, c F-7;
- (j) the Plaintiff's costs of the Action at the highest possible scale;
- (k) all applicable taxes, including the harmonized sales tax; and
- (l) such further and other relief as the Plaintiff may request and this Honourable Court may deem just.

The Plaintiff KAIN Labs

2. The Plaintiff Varcan Inc., operating as KAIN Labs, is a corporation incorporated under the laws of Ontario with a registered office located at 55 Victoria Street North, J, Kitchener, Ontario, N2H 5B7.
3. The Plaintiff is a successful software and technology development company, which creates customized technology and software solutions that are tailored to the specific needs and goals of their end customers.

4. The corporate Plaintiff was incorporated July 3, 2001. Before this date, the business of KAIN Labs was operated as a sole proprietorship by its director and CEO Mr. Harsch Khandelwal of Kitchener, Ontario.
5. References herein to KAIN Labs include reference to the business of KAIN Labs operated before incorporation by Mr. Khandelwal as applicable at the dates mentioned.

The Defendant Wallenstein Feed & Supply Ltd. (“WFS”)

6. The Defendant WFS is a corporation incorporated under the laws of Ontario with a registered office located at 7307 Highway 86, Wallenstein, Ontario, N0B 2S0.
7. WFS is believed to be the largest privately owned feed mill in North America. Broadly speaking, it manufactures and sells various feed for the Ontario livestock industry. Its annual revenues are believed to fall in the range of \$500M and \$1B CAD.
8. The corporate Defendant WFS came into existence in 2010 by amalgamation with several other corporations. WFS has operated for decades through such corporate or other predecessors, and has been owned and operated since its inception by the Martin family of Wallenstein, Ontario.
9. References herein to WFS include reference to all predecessors of WFS, as applicable at the dates mentioned.

KAIN Labs Software

10. The relationship between WFS and KAIN Labs began in approximately 1999.

11. At that time, WFS was a much smaller operation operating only one or two feed mills. Similarly, KAIN Labs was being operated by Mr. Khandelwal individually. He and WFS (through its then head representative Mr. Rick Martin) entered into a handshake arrangement, under which:
 - (a) WFS committed to using KAIN Labs exclusively for all non-automation custom software development services that WFS' growing business would require;

 - (b) WFS would pay KAIN Labs a monthly fee for all development work needed, which monthly fee was anticipated to grow over time as the business of WFS and its corresponding software needs grew;

 - (c) this monthly fee also covered any support work needed, and conveyed a permission for WFS to use the software in the course of its business during the life of the parties' relationship; and

 - (d) finally, KAIN Labs agreed not to provide any software development and support services to WFS competitors.

12. The first three software products that KAIN Labs developed for WFS' business needs were a suite of applications known between the parties as WinPOPS Daily, wpAdmin and wpMonth End. These three software products were first authored by KAIN Labs in 1999/2000, and allowed WFS to manage customers, products, orders, invoicing, month end routines and more. It manages the workflow from order entry to invoicing and provided a lot of the business intelligence used to fuel WFS' growth.

13. Over the following quarter century, KAIN Labs went on to author a large number of additional custom software products for use in WFS' business, all of which played a material role in transforming WFS from a small independent family mill to North America's largest privately owned feed mill. These software products are known between the parties by the following names:
 - (a) FeedTrack, first authored between 2012 and 2014, which allows WFS to track feed orders from order entry to delivery at the farm;
 - (b) FeedTrack.Mobile, first authored between 2012 and 2014, which allows WFS to provide FeedTrack functionality on mobile devices for sales staff and customers;
 - (c) ATM, first authored around 2013, which allows WFS to send orders directly for production to its manufacturing plants;

- (d) APGL, first authored around 2020, which is a custom accounting software and replaces the need for multiple full-time accounting staff;
 - (e) Mobile Trucking, first authored around 2020, which allows WFS' drivers to log their delivery activities and ensure that the right feed ends up in the right bin;
 - (f) Dispatch, first authored around 2021, which allows WFS to allocate orders to trucks for delivery and to track truck locations; and
 - (g) Shell, first authored around 2022, which extends the original functionality of the earlier WinPOP suite of applications and improves their operation with newer versions of Microsoft Windows.
14. These software products, along with various other software applications to be particularized prior to the commencement of discoveries, are collectively referred to as the "KAIN Labs Software."
15. All or most of the KAIN Labs Software has (between its first authoring and the present date) been updated, tailored and improved by KAIN Labs, including as part of KAIN Labs ongoing support services to WFS.
16. Today, the entire suite of KAIN Labs Software powers the entire business of WFS and contributed significantly to its significant growth and success over the past quarter century.

KAIN Labs Copyright

17. Each of the authors of the KAIN Labs Software (including those contributing to all updates, tailoring and improvements noted above) were employees of KAIN Labs, acting in the course of their employment by KAIN Labs (collectively the “**Authors**”).
18. None of the Authors, or any employees of KAIN Labs, were ever employed by WFS.
19. Each of the Authors have at all material times been a citizen or subject of or a person ordinarily resident in Canada or another a treaty country, within the meaning of section 5(1)(a) of the *Copyright Act*.
20. Each of the KAIN Labs Software was authored by the Authors through their individual and collective exercise of significant skill and judgment.
21. Accordingly, each of the KAIN Labs Software is an original literary work within the meaning of section 2 “literary work” of the *Copyright Act*.
22. Moreover, copyright subsists in each of the KAIN Labs Software pursuant to section 5 of the *Copyright Act* for the term set out in paragraph 6 of the *Copyright Act*.

23. Pursuant to section 13(3) of the *Copyright Act*, KAIN Labs as employer of each of the Authors is the first owner of copyright in each of the KAIN Labs Software. To the extent that the first owner of copyright in any of the KAIN Labs Software was Mr. Khandelwal (either as an Author or as employer of an Author) Mr. Khandelwal has assigned such copyright and the right to sue for past infringement to the corporate Plaintiff.
24. KAIN Labs has never assigned its copyright in the KAIN Labs Software to WFS or any third party.
25. Accordingly, KAIN Labs remains the owner of copyright in Canada in each of the KAIN Labs Software.
26. Copies of the KAIN Labs Software may be inspected at the offices of the Plaintiff's counsel upon request and following the usual appropriate arrangements.

A Period of Good Working Relationship

27. For years, KAIN Labs and WFS continued on good terms under the arrangement first struck between Mr. Khandelwal and Mr. Rick Martin.

28. During this time, WFS honoured its commitment to exclusively source its non-automation custom software development and support work from KAIN Labs. WFS' monthly support payments were always made to KAIN Labs and, as the parties had anticipated, the monthly fees to KAIN Labs did increase over time as the WFS business expanded.
29. By September 2024, the monthly development and support fee paid to KAIN Labs by WFS was roughly \$68,000 inclusive of HST. Yet, Mr. Martin would often comment to Mr. Khandelwal that even a much higher month fee would have been worth it to WFS, given all the value and competitive advantage that the KAIN Labs Software provided to WFS.
30. In fact, Mr. Martin told Mr. Khandelwal that the competitive advantage his company enjoyed using the KAIN Labs Software was integral to WFS' growth.
31. For its part, KAIN Labs kept its commitments including not to source work from WFS competitors, and in fact KAIN Labs turned down several lucrative opportunities over the years from WFS competitors. KAIN Labs brought these opportunities to WFS and asked whether WFS remained insistent that KAIN Labs not engage in these projects. WFS confirmed that it would not authorize KAIN Labs to take them on.

Business Concerns and Relationship Termination

32. Unfortunately, beginning in approximately 2023 new family members within the WFS ownership group began to take on more senior leadership roles and they began to take steps that caused concern to KAIN Labs:

- (a) In early 2023, and for unknown reasons, KAIN Labs discovered that WFS' new leadership had begun to authorize WFS employees to access underlying source code for various KAIN Labs software. Previously, WFS leadership (Mr. Rick Martin) had committed to KAIN Labs that this would never be done without KAIN Labs' express permission. KAIN Labs took these concerns to Mr. Rick Martin, and the parties were able to overcome the issue and continue their relationship.
- (b) Then, beginning in mid-2023, WFS' new leadership began to signal to KAIN Labs that they would be looking for opportunities to bring software development and support "in-house," instead of using KAIN Labs exclusively for this work. Again, KAIN Labs brought these concerns to Mr. Rick Martin who indicated back that he believed at the end of the day WFS would want to continue using KAIN Labs exclusively for these services, given what he assessed to be the applicable cost/benefit analysis.

33. However, by 2024 the newer generation of leaders within WFS had come to exercise greater decision making control, and notified KAIN Labs that they no longer wished to continue under the parties' prior exclusive working arrangement. Instead, they indicated they would in the future look to move much of this work "in-house."
34. KAIN Labs informed WFS that if WFS was not prepared to source this work exclusively from KAIN Labs, then KAIN Labs would no longer wish to continue the parties' relationship.
35. Having operated for decades without any written agreement, the parties began to negotiate termination of their business relationship.
36. At all times, KAIN Labs indicated to WFS that it was prepared to negotiate any reasonable transition period for WFS to continue accessing and using KAIN Labs Software while WFS looked to license new software from third parties, or build its own.
37. Yet, suddenly and by letter dated October 8, 2024, WFS formally provided express notice to KAIN Labs that it was terminating their business relationship.
38. In this letter, WFS demanded (in summarized form) that KAIN Labs stop providing support services and return any confidential information of WFS that it had been using towards prior support.

39. KAIN Labs complied with these requests in good faith.
40. In this same letter, WFS demanded that KAIN Labs execute intellectual property assignments in favour of WFS to enable WFS to obtain full ownership of all intellectual property.
41. KAIN Labs did not agree to this request, as it had maintained at all times its ownership of copyright in the KAIN Labs Software.
42. Following WFS' termination letter of October 8, KAIN Labs continued to offer WFS an opportunity to negotiate a period of transition. WFS refused to enter such discussions.
43. Eventually, by December 2024, KAIN Labs began to ask for written confirmation that WFS had stopped using KAIN Labas Software in its business and had deleted all copies of the same under its possession or control.
44. Again, WFS chose not to provide such assurances.
45. By January 2025, KAIN Labs came to determine through no improper means that WFS was continuing to use all or much of the KAIN Labs Software to run its operations.

46. In summary, over roughly the past 25 years KAIN Labs used its technical expertise to provide WFS a significant technological edge over their competition, all based on a handshake arrangement with senior WFS family directors such as Mr. Rick Martin, who recognized the value of being permitted to use KAIN Labs Software.
47. Now new and younger management feel like they no longer wish to pay for the right to use this software, and have refused to negotiate with KAIN Labs over any continuing permission to do so. Instead, they appear intent on continuing to use this software for free, and will continue their ongoing acts of infringement unless and until restrained by this Honourable Court.
48. WFS' continued and ongoing unauthorized use of the KAIN Labs Software, all or in substantial part, without any license or permission from the Plaintiff, constitutes an unauthorized reproduction of all or a substantial part of the KAIN Labs Software, contrary to sections 3 and 27(1) of the *Copyright Act*.
49. To the extent that WFS has by itself or by retaining others made modifications to KAIN Labs Software for WFS, which is not presently known to be the case but would be relied upon by the Plaintiff, such acts would also be contrary to sections 3 and 27(1) of the *Copyright Act*, and if done for WFS through others would amount to infringement by "authorization" by WFS, within the meaning of section 3 of the *Copyright Act*.
50. All acts of infringement by the Defendant have been for commercial purposes.

51. The Defendant's infringements described herein have caused the Plaintiff damage, including irreparable damage, and has and will enable the Defendant to enjoy unjust profits. They are also willful, deliberate, blatant, intentional, malicious and outrageous.
52. The full scope of the Defendant's infringements are not known to the Plaintiff but are known to the Defendant and the Plaintiff pleads fully in respect of same.
53. The Defendant's activities will continue unless restrained by this Court.
54. KAIN Labs proposes that this action be tried in Toronto, Canada.
55. This action is not being pursued as a simplified proceeding.

Dated: January 30, 2025

Gowling WLG (Canada) LLP

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