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**UNITED STATES DISTRICT COURT**

**EASTERN DISTRICT OF CALIFORNIA**

Zurich American Insurance Company, General  
Security Indemnity Company of Arizona,  
Faraday Capital Limited, AIG Specialty  
Insurance Company, Lexington Insurance  
Company, and Westport Insurance  
Corporation,

Plaintiffs,

v.

WM Bolthouse Farms, Inc.,

Defendant.

Case No.

**COMPLAINT FOR DECLARATORY  
RELIEF**

1 Plaintiffs Zurich American Insurance Company, General Security Indemnity Company of  
2 Arizona, Faraday Capital Limited, AIG Specialty Insurance Company; Lexington Insurance  
3 Company; and Westport Insurance Corporation (collectively “Plaintiffs”) bring this Complaint  
4 for Declaratory Relief against Defendant WM. Bolthouse Farms, Inc. (“Defendant” or  
5 “Bolthouse”) and allege as follows:

6 **NATURE OF THE ACTION**

7 1. Plaintiffs seek a declaratory judgment that the first party property insurance  
8 policies they separately provided to Defendant does not cover the Defendant’s claimed losses  
9 arising out of the Coronavirus/COVID-19 pandemic.

10 **THE PARTIES**

11 2. Plaintiff Zurich American Insurance Company (“Zurich”) was and is a corporation  
12 organized under the laws of the State of New York with a principal place of business located at  
13 1299 Zurich Way, Schaumburg, Illinois 60196, and is authorized to transact business as an  
14 insurer in California. Zurich provided a first-party commercial property insurance policy to  
15 Bolthouse, Policy No. PPR3230590-00 (the “2019-20 Zurich Policy”), that afforded coverage in  
16 accordance with the policy’s terms and conditions for the policy period of June 16, 2019 to June  
17 16, 2020. Zurich provided a first-party commercial property insurance policy to Bolthouse, Policy  
18 No. PPR3230590-01 (the “2020-21 Zurich Policy”), that afforded coverage in accordance with  
19 the policy’s terms and conditions for the policy period of June 16, 2020 to June 16, 2021.

20 3. Plaintiff Faraday Capital Limited (“Faraday”) was and is a corporation organized  
21 under the laws of the United Kingdom, with a principal place of business located at The Corn  
22 Exchange, 5th Floor, 55 Mark Lane, London EC3R 7NE, United Kingdom. Faraday is the lead  
23 underwriter subscribing to the first-party commercial property insurance policy, Policy No.  
24 PRPNA1903436 (the “2019-20 London Policy”), provided to Bolthouse that afforded coverage in  
25 accordance with the policy’s terms and conditions for the policy period of June 16, 2019 to June  
26 16, 2020. Faraday is the lead underwriter subscribing to the first-party commercial property  
27 insurance policy, Policy No. PRPNA2003436 (the “2020-21 London Policy”), provided to  
28

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1 Bolthouse that afforded coverage in accordance with the policy’s terms and conditions for the  
2 policy period of June 16, 2020 to June 16, 2021.

3 4. Plaintiff General Security Company of Arizona (“GSINDA”) was a corporation  
4 organized under the laws of New York, which was re-domesticated in Arizona, with a principal  
5 place of business located at 28 Liberty St., Suite 5400, New York, NY 10005, and is authorized to  
6 transact business as an insurer in California. GSINDA provided a first-party commercial property  
7 insurance policy to Bolthouse, Policy No. FA0058173-2019-1 (the “2019-20 GSINDA Policy”),  
8 that afforded coverage in accordance with the policy’s terms and conditions for the policy period  
9 of June 16, 2019 to June 16, 2020. GSINDA provided a first-party commercial property insurance  
10 policy to Bolthouse, Policy No. FA0058173-2020-1 (the “2020-21 GSINDA Policy”), that  
11 afforded coverage in accordance with the policy’s terms and conditions for the policy period of  
12 June 16, 2020 to June 16, 2021.

13 5. Plaintiff Westport Insurance Corporation (“Westport”) was and is a corporation  
14 organized under the laws of Missouri, with a principal place of business located at Kansas City,  
15 Missouri, and is authorized to transact business as an insurer in California. Westport provided a  
16 first-party commercial property insurance policy to Bolthouse, Policy No. NAP 2003540 00 (the  
17 “2019-20 Westport Policy”), that afforded coverage in accordance with the policy’s terms and  
18 conditions for the policy period of June 16, 2019 to June 16, 2020. Westport provided a first-party  
19 commercial property insurance policy to Bolthouse, Policy No. NAP 2003540 00 (the “2020-21  
20 Westport Policy”), that afforded coverage in accordance with the policy’s terms and conditions  
21 for the policy period of June 16, 2020 to June 16, 2021.

22 6. Plaintiff Lexington Insurance Company (“Lexington”) was and is a company  
23 organized under the laws of the State of Delaware with its principal place of business located at  
24 99 High Street, Boston, Massachusetts 02110 and authorized to do business as an insurer under  
25 California law. Lexington provided a first-party commercial property insurance policy to  
26 Bolthouse, Policy No. 021318090 (the “2019-20 Lexington Policy”), that afforded coverage in  
27 accordance with the policy’s terms and conditions for the policy period of June 16, 2019 to June  
28 16, 2020.

1 7. Plaintiff AIG Specialty Insurance Company was and is a company organized under  
2 the laws of the State of Illinois with its principal place of business located at 175 Water Street,  
3 New York, New York 10038 and is authorized to do business as an insurer under California law.  
4 AIG Specialty Insurance Company provided a first-party commercial property insurance policy to  
5 Bolthouse, Policy No. 044869187 (the “2020-21 AIG Policy”), that afforded coverage in  
6 accordance with the policy’s terms and conditions for the policy period of June 16, 2020 to June  
7 16, 2021.

8 8. Defendant WM. Bolthouse Farms, Inc. was and is a corporation organized under  
9 the laws of the State of Michigan, with its principal place of business located at 7200 East  
10 Brundage Lane, Bakersfield, California 93307.

11 **JURISDICTION AND VENUE**

12 9. This Court has jurisdiction over this action pursuant to 28 U.S.C. §1332, as there  
13 exists diversity of citizenship between all of the Plaintiffs and the Defendant, and the matter in  
14 controversy exceeds the sum of \$75,000. The Court has personal jurisdiction over Bolthouse  
15 because Bolthouse’s principal place of business located at 7200 East Brundage Lane, Bakersfield,  
16 California 93307, and Bolthouse has sufficient contacts with the forum.

17 10. This is an action for declaratory judgment pursuant to 28 U.S.C. §2201, to  
18 determine a real and justiciable controversy between Plaintiffs and Defendant with respect to their  
19 rights and obligations, if any, under certain first party property insurance contracts that Plaintiffs  
20 separately provided to Defendant for the policy periods of June 16, 2019 to June 16, 2020 and  
21 June 16, 2020 to June 16, 2021.

22 11. Venue is proper pursuant to 28 U.S.C. §1391 because Defendant resides in this  
23 district and because a substantial portion of the events or omissions giving rise to the claim  
24 occurred in this district.

25 **THE INSURANCE POLICIES**

26 12. Plaintiff Insurers provided individual policies of insurance identified herein,  
27 subject to their applicable terms, limits, conditions, and exclusions for the policy periods of June  
28 16, 2019 to June 16, 2020 (the “2019-20 Policies”) and June 16, 2020 to June 16, 2021 (the

1 “2020-21 Policies”, and with the 2019-20 Policies, the “Policies”). The Policies are primary  
2 property insurance policies in which the individual Plaintiff Insurers are separately liable for their  
3 respective share of the Policies’ Limits of Liability.

4 13. For coverage under the Policies to be triggered, there must be direct physical loss  
5 of or damage to covered property. Specifically, the Policies contain the following language:

6  
7 1.01. INSURING AGREEMENT

8 This Policy Insures against **direct physical loss of or damage** caused by a  
9 **Covered Cause of Loss** to Covered Property, at an Insured Location  
described in Section II-2.01, all subject to the terms, conditions and  
exclusions stated in this Policy.

10 \* \* \*

11 7.11. **Covered Cause of Loss** – All risks of direct physical loss of or damage  
12 from any cause unless excluded.  
13 \* \* \*

14 14. Insofar as Bolthouse alleges it sustained direct physical loss of or damage to  
15 insured property from the Coronavirus/COVID-19 and/or any federal, state or local government  
16 order issued in response to the COVID-19 pandemic, there is no coverage under the Property  
17 Damage provision because the Coronavirus/COVID-19 and/or any federal, state or local  
18 government order issued in response to the COVID-19 pandemic did not cause physical loss of or  
19 damage to property.

20 15. The Policies’ Time Element and Extra Expense provisions provide in pertinent  
21 part as follows:

22 SECTION IV – TIME ELEMENT

23 4.01. LOSS INSURED

24 4.01.01 The Company will pay for the actual Time Element loss the  
25 Insured sustains, as provided in the Time Element Coverage,  
26 during the Period of Liability. The Time Element loss must result  
27 from the necessary **Suspension** of the Insured’s business activities  
28 at an Insured Location. The **Suspension** must be due to direct  
physical loss of or damage to Property (of the type insurable under  
this Policy other than **Finished Stock**) caused by a **Covered**

1 **Cause of Loss** at the **Location**, or as provided in Off Premises  
2 Storage for Property Under Construction Coverages.

3 \* \* \*

4 4.02.03 EXTRA EXPENSE

5 The Company will pay for the reasonable and necessary Extra  
6 Expenses incurred by the Insured, during the period of Liability, to  
7 resume and continue as nearly as practicable the Insured's normal  
8 business activities that otherwise would be necessarily suspended,  
9 due to direct physical loss of or damage caused by a **Covered  
Cause of Loss** to Property of the type insurable under this policy at  
10 a **Location**.

11 \* \* \*

12 16. Insofar as Bolthouse alleges it sustained losses due to the necessary suspension of  
13 its business resulting from direct physical loss of or damage to covered property and that direct  
14 physical loss of or damage to property was caused by the Coronavirus/COVID-19 and/or any  
15 federal, state or local government order issued in response to the COVID-19 pandemic, there is  
16 no coverage under the Time Element provisions because the Coronavirus/COVID-19 and/or any  
17 federal, state or local government order issued in response to the COVID-19 pandemic did not  
18 cause physical loss of or damage to property.

19 17. Insofar as Bolthouse alleges it sustained reasonable and necessary expenses to  
20 resume and continue as nearly as practicable normal business activities that otherwise would be  
21 necessarily suspended due to direct physical loss of or damage to covered property and that direct  
22 physical loss of or damage to property was caused by the Coronavirus/COVID-19 and/or any  
23 federal, state or local government order issued in response to the COVID-19 pandemic, there is  
24 no coverage under the Extra Expense provision because the Coronavirus/COVID-19 and/or any  
25 federal, state or local government order issued in response to the COVID-19 pandemic did not  
26 cause physical loss of or damage to property.

27 18. The Policies provide the following Special Coverages:

28 5.02.03 CIVIL OR MILITARY AUTHORITY

The Company will pay for the actual Time Element loss sustained  
by the Insured, as provided by this Policy, resulting from the

1 necessary **Suspension** of the Insured's business activities at an  
2 Insured Location if the **Suspension** is caused by order of civil or  
3 military authority that prohibits access to the **Location**. That order  
4 must result from a civil authority's response to direct physical loss  
5 of or damage caused by a **Covered Cause of Loss** to property not  
6 owned, occupied, leased or rented by the Insured or insured under  
7 this Policy and located within the distance of the Insured's  
8 Location as stated in the Declarations.

6 \* \* \*

7 5.02.15. INGRESS/EGRESS

8 The Company will pay for the actual Time Element loss sustained  
9 by the Insured, as provided by this Policy, resulting from the  
10 necessary **Suspension** of the Insured's business activities at an  
11 Insured Location if ingress or egress to that Insured Location by  
12 the Insured's suppliers, customers or employees is prevented by  
13 physical obstruction due to direct physical loss of or damage  
14 caused by a **Covered Cause of Loss** to property not owned,  
15 occupied, leased or rented by the Insured or insured under this  
16 Policy and located within the distance of the Insured Location as  
17 stated in the Declarations. The Company will pay for the actual  
18 Time Element loss sustained, subject to the deductible provisions  
19 that would have applied had the physical loss or damage occurred  
20 at the Insured Location, during the time ingress or egress remains  
21 prevented by physical obstruction but not to exceed the number of  
22 consecutive days as stated in the Declarations following such  
23 obstruction up to the limit applying to this Coverage.

18 \* \* \*

19  
20 19. Pursuant to the Civil Authority provision, the Policies cover losses sustained  
21 resulting from the necessary suspension of business activities at an Insured Location if the  
22 suspension is caused by order of civil or military authority that prohibits access to the location.  
23 The order must result from a civil authority's response to direct physical loss of or damage caused  
24 by a Covered Cause of Loss to property not owned, occupied, leased or rented by the Insured and  
25 located within one mile of the Insured Location. For coverage under the Policies to be triggered  
26 under the Civil Authority provision there must be direct physical loss of or damage to property  
27 located within one mile of the Insured Location, and access to the Insured Location must be  
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1 prohibited by order of civil or military authority as a result of the direct physical loss of or  
2 damage by a Covered Cause of Loss.

3 20. Pursuant to the Ingress/Egress provision, the Policies cover losses sustained  
4 resulting from the necessary suspension of business activities at an Insured Location if ingress or  
5 egress to that Insured Location by suppliers, customers or employees is prevented by physical  
6 obstruction due to direct physical loss of or damage caused by a Covered Cause of Loss to  
7 property not insured under the Policies located within one mile of the Insured Location. For  
8 coverage under the Policies to be triggered under the Ingress/Egress provision there must be  
9 direct physical loss or damage by a Covered Cause of Loss to property located within one mile of  
10 the Insured Location, and access to the Insured Location must be prevented by physical  
11 obstruction due to direct physical loss of or damage.

12 21. Bolthouse has not claimed that any property located within one mile of an Insured  
13 Location has sustained direct physical loss or damage. Insofar as Bolthouse alleges that property  
14 located within one mile of an Insured Location sustained direct physical loss or damage due to the  
15 Coronavirus/COVID-19 and/or or any federal, state or local government order issued in response  
16 to the COVID-19 pandemic, there is no coverage under the Civil Authority or Ingress/Egress  
17 provisions because the Coronavirus/COVID-19 and/or any federal, state or local government  
18 order issued in response to the COVID-19 pandemic did not cause physical loss of or damage to  
19 property. Bolthouse has also not established that there was a necessary suspension of its business  
20 operations caused by an order of civil authority that prohibited access to an Insured Location. Nor  
21 has Bolthouse established that there was a necessary suspension of its business activities because  
22 ingress or egress by Bolthouse's suppliers, customers or employees was prevented by physical  
23 obstruction.

24 22. The Policies provide the following Contingent Time Element provisions:

25 5.02.05. CONTINGENT TIME ELEMENT

26 This Policy covers the actual Time Element loss as provided by the  
27 Policy, sustained by the Insured during the Period of Liability  
28 directly resulting from the necessary **Suspension** of the Insured's  
business activities at an Insured Location if the **Suspension** results



1 from direct physical loss of or damage caused by a **Covered**  
2 **Cause of Loss** to Property (of the type insurable under this Policy)  
3 at **Direct Dependent Time Element Locations, Indirect**  
4 **Dependent Time Element Locations, and Attraction Properties**  
5 located worldwide, except for in the following:

6 \* \* \*

7 7.16. **Direct Dependent Time Element Location –**

8 7.16.01. Any **Location** of a direct: customer, supplier, contract  
9 manufacturer or contract service provider to the Insured;

10 7.16.02. Any **Location** of any company under a royalty, licensing fee or  
11 commission agreement with the Insured.

12 7.16.03. A **Direct Dependent Time Element Location** does not include  
13 Locations that are Insured Locations under this Policy or the  
14 Locations of any company directly or indirectly supplying to, or  
15 receiving from, the Insured, electricity, fuel, gas, water, steam,  
16 refrigeration, sewage, voice, data or video.

17 \* \* \*

18 23. Pursuant to the Contingent Time Element provision, the Policies cover the actual  
19 Time Element loss sustained resulting from the necessary suspension of business activities at an  
20 Insured Location caused by direct physical loss of or damage to property caused by a Covered  
21 Cause of Loss at any location of a direct customer, supplier, contract manufacturer, contract  
22 service provider or company under a royalty licensing fee or commission agreement with the  
23 Insured. The Policies exclude coverage for Indirect Dependent Time Element Locations and  
24 Attraction Properties.

25 24. Bolthouse has not claimed that any location of a direct customer, supplier, contract  
26 manufacturer, contract service provider or company under a royalty licensing fee or commission  
27 agreement with Bolthouse, has sustained direct physical loss of or damage to property. Insofar as  
28 Bolthouse alleges that a Direct Dependent Time Element Location sustained direct physical loss  
or damage due to the Coronavirus/COVID-19 and/or or any federal, state or local government  
order issued in response to the COVID-19 pandemic, there is no coverage under the Contingent  
Time Element provision because the Coronavirus/COVID-19 and/or any federal, state or local

1 government order issued in response to the COVID-19 pandemic did not cause physical loss of or  
2 damage to property. Bolthouse has also not established that it sustained a necessary suspension of  
3 its business due to direct physical loss of or damage to property at a location of a direct customer,  
4 supplier, contract manufacturer, contract service provider or company under a royalty licensing  
5 fee or commission agreement with Bolthouse.

6 25. The Policies also contain the following Decontamination Costs coverage

7  
8 5.02.07 DECONTAMINATION COSTS

9 If Covered Property is **Contaminated** from direct physical loss of  
10 or damage caused by a **Covered Cause of Loss** to Covered  
11 Property and there is in force at the time of the loss any law or  
12 ordinance regulating **Contamination** due to the actual not  
13 suspected presence of Contaminant(s), then this Policy covers, as a  
14 direct result of enforcement of such law or ordinance, the increased  
15 cost of decontamination and/or removal of such **Contaminated**  
16 Covered Property in a manner to satisfy such law or ordinance. This  
17 Coverage applies only to that part of Covered Property so  
18 **Contaminated** due to the actual not suspected presence of  
19 **Contaminant(s)** as a result of direct physical loss or damage. The  
20 Company is not liable for the costs required for removing  
21 **Contaminated** uninsured property nor the **Contaminant** therein or  
22 thereon, whether the **Contamination** results from a **Covered**  
23 **Cause of Loss**.

24 \* \* \*

25 26. Coverage under the Decontamination Costs provision is provided only if Covered  
26 Property is contaminated from direct physical loss of or damage caused by a Covered Cause of  
27 Loss and there is a law or ordinance regulating contamination due to the actual not suspected  
28 presence of contaminants. Insofar as Bolthouse alleges that the Covered Property was  
contaminated as a result of direct physical loss of or damage caused by Coronavirus/COVID-19  
and/or any federal, state or local government order issued in response to the COVID-19  
pandemic, there is no coverage under this provision because the Coronavirus/COVID-19 and/or  
any federal, state or local government order issued in response to the COVID-19 pandemic did  
not cause direct physical loss or damage to property.

27 27. The Policies contain the following Protection and Preservation of Property  
28 coverage:

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5.02.23 PROTECTION AND PRESERVATION OF PROPERTY

This Policy covers, up to the limit applying to this Coverage:

5.02.23.01 The reasonable and necessary costs incurred for actions to temporarily protect or preserve Covered Property; provided such actions are necessary due to actual or imminent physical loss or damage due to a **Covered Cause of Loss** to such Covered Property; and

5.02.23.02 The Gross Earnings loss or Gross Profit loss sustained by the Insured for a period of time not to exceed the hours listed in the Declarations prior to and after the Insured first taking reasonable action for the temporary protection and preservation of Covered Property.

5.02.23.03. This Coverage is subject to the deductible provisions that would have applied had the physical loss or damage occurred.

\* \* \*

28. Coverage for Protection and Preservation of Property is only triggered for reasonable and necessary costs incurred to protect or preserve Covered Property, if the actions are necessary due to the actual or imminent physical loss or damage from a Covered Cause of Loss. Insofar as Bolthouse alleges that its claims are covered under the Protection and Preservation of Property coverage, there is no coverage under this provision because the Coronavirus/COVID-19 and/or any federal, state or local government order issued in response to the COVID-19 pandemic did not cause direct physical loss or damage to property.

29. Even if the Coronavirus/COVID-19, and/or any federal, state or local government order issued in response to the COVID-19 pandemic, caused direct physical loss of or damage to property, Bolthouse’s claimed losses would be excluded by the Policies various exclusions, including but not limited to the following:

**3.03. EXCLUSIONS**

3.03.01. This Policy excludes the following unless it results from direct physical loss or damage not excluded by this Policy.

3.03.01.01. **Contamination**, and any cost due to **Contamination** including the inability to use or occupy property or any cost of making property safe or suitable for use or occupancy, except as provided by the Radioactive Contamination Coverage of this Policy.

\* \* \*

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1           7.09.           **Contamination(Contaminated)** - Any condition of property due  
2                           to the actual presence of any foreign substance, impurity, pollutant,  
3                           hazardous material, poison, toxin, pathogen or pathogenic  
4                           organism, bacteria, virus, disease causing or illness causing agent,  
5                           **Fungus**, mold or mildew.

6                           \* \* \*

7           3.03.01.02.       Changes in size, color, flavor, texture or finish.

8           3.03.01.03.       Loss or damage arising from the enforcement of any law,  
9                           ordinance, regulation or rule regulating or restricting the  
10                          construction, installation, repair, replacement, improvement,  
11                          modification, demolition, occupancy, operation or other use, or  
12                          removal including debris removal of any property.

13                       \* \* \*

14           3.03.02.01.       Loss or damage arising from delay, loss of market, or loss of use.

15           3.03.02.02.       Indirect or remote loss or damage.

16                       \* \* \*

17           4.02.05.           EXCLUSIONS

18                           In addition to the exclusions elsewhere in this Policy, the following  
19                           exclusions apply to Time Element coverage:

20           4.02.05.01.       This Policy does not insure against:

21           4.02.05.01.01.     Any loss during any idle period that would have been  
22                           experienced had the **Suspension** of business activities not  
23                           occurred. This includes, but it not limited to, when  
24                           production, operation, services, delivery or receipt of goods  
25                           or services or any other business activities would have  
26                           ceased, or would not have taken place or would have been  
27                           prevented due to:

28                       \* \* \*

          4.02.05.01.01.03.   Any reason other than physical loss or damage insured by this  
  Policy.

                         \* \* \*

30.       It is undisputed that the Coronavirus/COVID-19 is a virus. Accordingly, the  
Contamination Exclusion applies to bar coverage for Bolthouse’s claims. Thus, even if Bolthouse  
could meet its burden of establishing physical loss of or damage to property as set forth above,  
which it cannot, Plaintiffs contend that the Contamination Exclusion bars coverage under the

1 Property Damage, Time Element, Civil Authority, Ingress/Egress, and/or Contingent Time  
2 Element coverages because the result from the inability to use or occupy property due to the  
3 presence of the Coronavirus/COVID-19.

4 31. For property to be covered under the Policies' Property Damage provision, it must  
5 be Covered Property. The Policies provide the following concerning property not covered:

6 3.02 PROPERTY NOT COVERED

7 This Policy does not insure the following property:

8 \* \* \*

9 3.02.04 Animals, standing timber and growing crops.

10 \* \* \*

11 32. Insofar as Bolthouse alleges it sustained direct physical loss of or damage to  
12 carrots that were unable to be harvested due to a lack of manpower to harvest and transport crops  
13 due to the Coronavirus/COVID-19 and/or any stay at home order issued in response to the  
14 COVID-19 pandemic, there is no coverage under the Property Damage provision because  
15 growing crops are not insured under the Policies and the Coronavirus/COVID-19 and/or any stay  
16 at home order issued in response to the COVID-19 pandemic did not cause physical loss of or  
17 damage to property.

18 33. Insofar as Bolthouse alleges that the carrots are covered property under the  
19 Policies, and that the carrots suffered direct physical loss or damage because the carrots became  
20 unusable and/or unfit for consumption because Bolthouse lacked the manpower to harvest and  
21 transport the carrots to a processing facility, the following exclusions would apply to bar coverage  
22 for Bolthouse's claims:

23 **3.03. EXCLUSIONS**

24 3.03.01. This Policy excludes the following unless it results from direct  
25 physical loss or damage not excluded by this Policy.

26 \* \* \*

27 3.03.01.02. Changes in size, color, flavor, texture or finish.

28 \* \* \*

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3.03.02.05. Loss or damage resulting from the Insured’s suspension of business activities, except to the extent provided by this Policy.

\* \* \*

3.03.04.03. Corrosion, depletion, deterioration, erosion, inherent vice, latent defect, rust, wear and tear.

\* \* \*

33. To the extent that Bolthouse claims unharvested carrots are covered property and the carrots sustained direct physical loss or damage because the carrots became unusable and/or unfit for consumption due to the delay in harvesting, the exclusion for “changes in size, color, flavor, texture, or finish” and the exclusion for “corrosion, depletion, deterioration, erosion, inherent vice, latent defect, rust, wear and tear” would apply to bar coverage. To the extent that Bolthouse claims the unharvested carrots sustained direct physical loss or damage because they could not be harvested or transported to a processing facility due to the lack of manpower, the exclusion for “[l]oss or damage resulting from the Insured’s suspension of business activities” would apply to bar coverage.

34. In addition to the exclusions noted above that are applicable to all Policies, certain policies also contain additional exclusions that apply to bar coverage subject to their individual terms and conditions.

35. Policy Nos. FA0058173-2019-1 and FA0058173-2020-1 contain the following exclusion:

MAP MOLD EXCLUSION

A. This Policy does not insure any loss, damage, claim, cost, expense or other sum directly or indirectly arising out of or relating to:

Mold, mildew, fungus, spores or other microorganism of any type, nature, or description, including but not limited to any substance whose presence poses an actual or potential threat to human health.

B. This exclusion applies regardless whether there is:

1. any physical loss or damage to insured property;
2. any insured peril or cause, whether or not contributing concurrently or in any sequence;
3. any loss of use, occupancy, or functionality; or

1 4. any action required including but not limited to repair, replacement,  
2 removal, cleanup, abatement, disposal, relocation, or steps taken to  
address medical or legal concerns.

3 C. This exclusion replaces and supersedes any provision in the Policy that  
4 provides insurance, in whole or in part, for these matters.

5 \* \* \*

6 36. Pursuant to this exclusion, Policy Nos. FA0058173-2019-1 and FA0058173-2020-  
7 1 do not insure any loss, damage, claim, cost, or expense that arises directly or indirectly out of  
8 the presence of microorganisms of any type, nature, or description that pose an actual or potential  
9 threat to human health. Moreover, this exclusion applies regardless of whether there has been any  
10 physical loss or damage to insured property or whether any other cause contributed to the claimed  
11 loss. This exclusion also applies to bar coverage for any claim for loss of use, occupancy or  
12 functionality and for the removal, cleanup, or abatement of the presence of microorganisms that  
13 pose an actual or potential threat to human health. The Coronavirus is a microorganism that  
14 endangers or threatens to endanger the health, safety or welfare of persons because it causes  
15 COVID-19, which is a severe respiratory illness. Accordingly, this exclusion applies to further  
16 bar coverage under Policy Nos. FA0058173-2019-1 and FA0058173-2020-1.

17 37. Policy No. PRPNA2003136 contains the following exclusions:

18 COMMUNICABLE DISEASE ENDORSEMENT

19 1. This policy, subject to all applicable terms, conditions and exclusions, covers  
20 losses attributable to direct physical loss or physical damage occurring during  
21 the period of insurance. Consequently and notwithstanding any other provision  
22 of this policy to the contrary, this policy does not insure any loss, damage,  
23 claim, cost, expense or other sum, directly or indirectly arising out of,  
attributable to, or occurring concurrently or in any sequence with a  
Communicable Disease or the fear or threat (whether actual or perceived) of a  
Communicable Disease.

24 2. For the purposes of this endorsement, loss, damage, claim, cost, expense or  
25 other sum, includes, but is not limited to, any cost to clean-up, detoxify,  
remove, monitor or test:

26 2.1. for a Communicable Disease, or

27 2.2. any property insured hereunder that is affected by such Communicable  
28 Disease.

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- 1 3. As used herein, a Communicable Disease means any disease which can be
- 2 transmitted by means of any substance or agent from any organism to another
- 3 organism where:
- 4 3.1. the substance or agent includes, but is not limited to, a virus, bacterium,
- 5 parasite or other organism or any variation thereof, whether deemed
- 6 living or not, and
- 7 3.2. the method of transmission, whether direct or indirect, includes but is
- 8 not limited to, airborne transmission, bodily fluid transmission,
- 9 transmission from or to any surface or object, solid, liquid or gas or
- 10 between organisms, and
- 11 3.3. the disease, substance or agent can cause or threaten damage to human
- 12 health or human welfare or can cause or threaten damage to,
- 13 deterioration of, loss of value of, marketability of or loss of use of
- 14 property insured hereunder.
- 15
- 16 4. This endorsement applies to all coverage extensions, additional coverages,
- 17 exceptions to any exclusion and other coverage grant(s).

18 \* \* \*

19 **MICROORGANISM EXCLUSION (ABSOLUTE)**

20 This Policy does not insure any loss, damage, claim, cost, expense or other sum

21 directly or indirectly arising out of or relating to:

22 mold, mildew, fungus, spores or other microorganism of any type, nature, or

23 description, including but not limited to any substance whose presence poses

24 an actual or potential threat to human health.

25 This Exclusion applies regardless whether there is (i) any physical loss or damage

26 to insured property; (ii) any insured peril or cause, whether or not contributing

27 concurrently or in any sequence; (iii) any loss of use, occupancy, or functionality;

28 or (iv) any action required, including but not limited to repair, replacement,

removal, cleanup, abatement, disposal, relocation, or steps taken to address

medical or legal concerns.

This Exclusion replaces and supersedes any provision in the Policy that provides

insurance, in whole or in part, for these matters.

\* \* \*

38. The Communicable Disease Exclusion in Policy No. PRPNA2003136, excludes

“any loss, damage, claim, cost, expense or other sum, directly or indirectly arising out of,

attributable to, or occurring concurrently or in any sequence with a Communicable Disease or the

fear or threat (whether actual or perceived) of a Communicable Disease.” Communicable disease

is defined as “any disease which can be transmitted by means of any substance or agent from any

organism to another organism” including “virus” that is transmitted directly or indirectly by

airborne, bodily fluid, or surface to surface transmission. The Coronavirus/COVID-19 is a



1 communicable disease that causes a severe respiratory illness. Bolthouse has confirmed that its  
2 claims are all the result of COVID-19. As the Coronavirus/COVID-19 is a “communicable  
3 disease”, the Communicable Disease Exclusion in Policy No. PRPNA2003136 bars all coverage  
4 for Bolthouse’s claims under Policy No. PRPNA2003136.

5 39. Pursuant to the Microorganism Exclusion, Policy No. PRPNA2003136 does not  
6 insure any loss, damage, claim, cost, or expense that arises directly or indirectly out of the  
7 presence of microorganisms of any type, nature, or description that pose an actual or potential  
8 threat to human health. Moreover, this exclusion applies regardless of whether there has been any  
9 physical loss or damage to insured property or whether any other cause contributed to the claimed  
10 loss. This exclusion also applies to bar coverage for any claim for loss of use, occupancy or  
11 functionality and for the removal, cleanup, or abatement of the presence of microorganisms that  
12 pose an actual or potential threat to human health. The coronavirus is a microorganism that  
13 endangers or threatens to endanger the health, safety or welfare of persons because it causes  
14 COVID-19, which is a severe respiratory illness. Accordingly, coverage the Microorganism  
15 Exclusion further bars coverage under Policy No. PRPNA2003136.

16 40. Policy No. FA0058173-2020-1 contains the following Communicable Disease  
17 Exclusion:

18 COMMUNICABLE DISEASE ENDORSEMENT – SCOR WORDING

- 19 1. Notwithstanding any other provision, clause or term of this Policy to the  
20 contrary, this Policy does not insure any loss, damage, liability, claim, cost,  
21 expense or other sum of any kind, whether directly or indirectly and/or in  
22 whole or in part relating to or occurring concurrently or in any sequence with a  
23 Communicable Disease or the fear or threat (whether actual or perceived) of a  
24 Communicable Disease.
- 25 2. For the Purpose of this Endorsement, loss, damage, liability, claim cost,  
26 expense or other sum, includes but is not limited to, any cost to clean-up  
27 detoxify, remove, monitor or test:
- 28 2.1 for a Communicable Disease, or
- 2.2 any property insured hereunder that is affected by a Communicable  
Disease.
3. As used herein:

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3.1 “Communicable Disease” means any infectious disease, contagious disease or communicable disease or any other disease which can be transmitted by means of any substance and/or agent from any organism to another organism where:

3.1.1 the disease, substance or agent includes, but is not limited to, a virus, bacterium, parasite or other organism or any variation or mutation thereof, whether deemed living or not, and

3.1.2 the method of transmission, whether direct or indirect, includes but is not limited to airborne transmission, bodily fluid transmission, transmission from or to any surface or object, solid, liquid or gas or between organisms, and

3.1.3 the disease, substance or agent, can cause or threaten damage to human health or human welfare or can cause or threaten damage to, deterioration of, loss of value of, marketability of or loss of use of tangible or intangible property insured hereunder.

3.2 “relating to” means relating to, in connection with, arising under, arising out of, as a result of, as a consequence of, attributable to, and any other terms commonly used and/or understood to reflect or describe a nexus and/or connection from one thing to another whether direct or indirect.

4. This Endorsement applies to all coverage extensions, additional coverages, exceptions to any exclusion and other coverage grant(s).

\* \* \*

41. The Communicable Disease Exclusion in Policy No. FA0058173-2020-1, excludes “any loss, damage, claim, cost, expense or other sum, directly or indirectly arising out of, attributable to, or occurring concurrently or in any sequence with a Communicable Disease or the fear or threat (whether actual or perceived) of a Communicable Disease.” Communicable disease is defined as “any disease which can be transmitted by means of any substance or agent from any organism to another organism” including “virus” that is transmitted directly or indirectly by airborne, bodily fluid, or surface to surface transmission. The Coronavirus/COVID-19 is a communicable disease that causes a severe respiratory illness. Bolthouse has confirmed that its claims are all the result of COVID-19. As the Coronavirus/COVID-19 is a “communicable disease”, the Communicable Disease Exclusion in Policy No. FA0058173-2020-1 bars all coverage for Bolthouse’s claims under Policy No. FA0058173-2020-1.

42. Policy No. NAP 2003540-01 contained the following Communicable Disease Exclusion:

The policy is hereby amended to include the following exclusion condition:

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Communicable Disease Exclusion

Notwithstanding anything to the contrary in this insurance, this insurance does not insure against:

Loss, damage, cost, expense or TIME ELEMENT of any type whatsoever that is related in any way to or caused directly or indirectly by any actual, suspected or potential COMMUNICABLE DISEASE regardless of whether any other cause contributes concurrently or in any sequence to the loss, damage, cost, expense or TIME ELEMENT.

COMMUNICABLE DISEASE means a contagious disease or illness arising out of or in any manner related to a bacterial infection or infections or biological virus or agent or the toxic products which are transmitted or spread, directly or indirectly, to a person from an infected person, plant, animal or anthropoid, or through the agency of an intermediate animal, host or vector of the inanimate environment or transmitted or spread by instrument or any other method of transmission.

COMMUNICABLE DISEASE shall include and not be limited to, for example, Acquired Immunodeficiency Syndrome (AIDS) or Human Immunodeficiency Virus (HIV), any type or strain of Severe Acute Respiratory Syndrome (SARS) or Severe Acute Respiratory Syndrome Coronavirus 2 (SRAS-CoV-2), Middle East Respiratory Syndrome (MERS), West Nile Disease, Zika virus, chicken pox, any type or strain of influenza or infections respiratory illness (including, but not limited to avian flu, Corona Virus or COVID-19), pneumonia, legionella, hepatitis, measles, meningitis, mononucleosis, whooping cough, cholera, Ebola hemorrhagic fever, bubonic plagues, anthrax and any variant(s) of the foregoing.

TIME ELEMENT means any type of loss which is measured, in whole or in part, by a period or the passage of time. TIME ELEMENT shall include, but shall not be limited to, Gross Earnings, Gross Profit, Business Interruption, Business Income, Extra Expense, Rental Insurance, Contingent Time Element, Contingent Business Interruption, Contingent Business Income, Contingent Extra Expense, Service Interruption – Time Element, Leasehold Interest, Commissions, Licensing Fees and Royalties, Ingress/Egress, Order of Civil or Military Authority, and Soft Costs. In the event that the language and/or terms used above to identify any TIME ELEMENT coverage is not an identical replication of the language/terms used in this policy, this will not negate application of this exclusion.

43. The Communicable Disease Exclusion in Policy No. NAP 2003540-01, excludes “Loss, damage, cost, expense or TIME ELEMENT of any type whatsoever that is related in any way to or caused directly or indirectly by any actual, suspected or potential COMMUNICABLE DISEASE regardless of whether any other cause contributes concurrently or in any sequence to

1 the loss, damage, cost, expense or TIME ELEMENT.” Communicable disease is defined as “a  
 2 contagious disease or illness arising out of or in any manner related to a bacterial infection or  
 3 infections or biological virus or agent or the toxic products which are transmitted or spread,  
 4 directly or indirectly, to a person from an infected person, plant, animal or anthropoid, or through  
 5 the agency of an intermediate animal, host or vector of the inanimate environment or transmitted  
 6 or spread by instrument or any other method of transmission.” The Coronavirus/COVID-19 is a  
 7 communicable disease that causes a severe respiratory illness. Bolthouse has confirmed that its  
 8 claims are all the result of COVID-19. As the Coronavirus/COVID-19 is a “communicable  
 9 disease”, the Communicable Disease Exclusion in Policy No. NAP 2003540-01 bars all coverage  
 10 for Bolthouse’s claims under Policy No. NAP 2003540-01.

11 44. Policy No. 021318090 issued by Lexington Insurance Company and Policy No.  
 12 044869187 issued by AIG Specialty Insurance Company include a Pollution, Contamination,  
 13 Debris Removal Exclusion Endorsement, which states, in relevant part:

14 **2. Pollution and Contamination Exclusion.**

15 This Policy does not cover loss or damage caused by, resulting from, contributed  
 16 to or made worse by actual, alleged or threatened release, discharge, escape or  
 17 dispersal of CONTAMINANTS or POLLUTANTS, all whether direct or indirect,  
 18 proximate or remote or in whole or in part caused by, contributed to or aggravated  
 by any physical damage insured by this Policy.

\* \* \*

19 CONTAMINANTS or POLLUTANTS means any solid, liquid, gaseous or  
 20 thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis,  
 21 chemicals and waste, which after its release can cause or threaten damage to  
 22 human health or human welfare or causes or threatens damage, deterioration, loss  
 23 of value, marketability or loss of use to property insured hereunder, including, but  
 24 not limited to, bacteria, virus, or hazardous substances as listed in the Federal  
 Water, Pollution Control Act, Clean Air Act, Resource Conservation and Recovery  
 Act of 1976, and Toxic Substances Control Act or as designated by the U.S.  
 Environmental Protection Agency. Waste includes materials to be recycled,  
 reconditioned or reclaimed.

25 45. The Pollution and Contamination Exclusion in Policy Nos. 021318090 and  
 26 044869187 exclude any loss or damage caused by, resulting from, contributed to or made worse  
 27 by actual or alleged release or discharge of Contaminants or Pollutants, which is defined to  
 28 include “virus.” As the coronavirus is a virus, it falls within the Endorsement’s definition of

1 Contaminants or Pollutants. Thus, this exclusion applies to bar all coverage for Bolthouse’s  
2 claims under Policy Nos. 021318090 and 004869187.

3 **46.** The Policy issued by AIG Specialty Insurance Company (Policy No. 044869187)  
4 includes the following Endorsement (No. 16):

5  
6 **COMMUNICABLE DISEASE EXCLUSION**

7 This endorsement modifies insurance provided by this Policy:

8 Notwithstanding any other provision of this Policy to the contrary, the Company  
9 does not insure any loss, cost, damage or expense, arising out of, attributable to, or  
occurring concurrently or in any sequence with a **communicable disease**.

10 As used herein, **communicable disease** means any infectious or contagious  
11 substance:

12 **1.** Including, but not limited to, a virus, bacterium, parasite or other organism or any  
13 mutation thereof, whether deemed living or not, and

14 **2.** Regardless of the method of transmission, whether direct or indirect, including,  
15 but not limited to, airborne transmission, bodily fluid transmission, transmission  
16 from or to any surface or object, solid, liquid or gas or between humans, animals, or  
from any animal to any human or from any human to any animal,

17 that can cause or threaten damage to human health or human welfare or causes or  
18 threatens damage, deterioration, loss of value, marketability or loss of use to  
tangible or intangible property insured hereunder.

19 For avoidance of doubt, no coverage extension, additional coverage, global  
20 extension, exception to any exclusion or other coverage grant shall afford any  
21 coverage that would otherwise be excluded through this exclusion. For further  
22 avoidance of doubt, loss, cost, damage or expense, includes any cost to clean-up,  
23 detoxify, remove, monitor or test: (1) for a **communicable disease** or (2) any  
24 tangible or intangible property insured hereunder that is affected by such  
25 **communicable disease**

26 **47.** The Communicable Disease Exclusion in Policy No. 044869187 excludes “any  
27 loss, cost, damage or expense, arising out of, attributable to, or occurring concurrently or in any  
28 sequence with a communicable disease.” Communicable disease is defined to include “a virus . . .  
that can cause or threaten damage to human health or humane welfare . . .” The  
Coronavirus/COVID-19 is a communicable disease that causes a severe respiratory illness and

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1 causes or threaten damage to human health. Bolthouse has confirmed that its claims are all the  
2 result of COVID-19. As the Coronavirus/COVID-19 is a “communicable disease,” the  
3 Communicable Disease Exclusion in Policy No. 044869187 bars all coverage for Bolthouse’s  
4 claims under Policy No. 044869187

5 **THE INSURANCE CLAIM**

6 48. On or about May 15, 2020, Bolthouse’s broker provided a First Notice of Loss  
7 under the Policies with effective dates of coverage from June 16, 2019 to June 16, 2020 for “a  
8 claim involving property damage and business interruption at facilities owned by Bolthouse  
9 Farms, Inc., associated with COVID-19 related issues, orders and events.” The First Notice of  
10 Loss advised that “all insured locations have been impacted.”

11 49. Plaintiffs’ independent adjuster, McLarens, promptly began its investigation of the  
12 claim and acknowledged the claim on May 18, 2020. A request for information (“RFI”) was  
13 issued to Bolthouse on June 10, 2020. A reservation of rights letter was issued on behalf of the  
14 2019-20 Policies on July 7, 2020, that identified the provisions of the 2019-20 Policies that may  
15 be applicable to Bolthouse’s claim based on the information that was available, and reiterated the  
16 need for Bolthouse to respond to the RFI.

17 50. McLarens requested that Bolthouse respond to the outstanding RFI on August 17,  
18 2020, September 14, 2020, October 21, 2020 and October 30, 2020. On December 8, 2021  
19 McLarens issued a letter that advised Bolthouse that the insurers would presume that Bolthouse  
20 did not intend to pursue its claim if Bolthouse did not respond to the RFI within 30 days.

21 51. On December 21, 2020, Bolthouse’s broker advised that Bolthouse was preparing  
22 a response to the RFI and that Bolthouse was also submitting a claim under the 2020-21 Policies.  
23 The claim reported under the 2020-21 Policies had a reported date of loss of June 17, 2020.  
24 McLarens confirmed receipt of the second claim on December 23, 2020.

25 52. On February 9, 2021, Bolthouse responded to the RFI and advised that the  
26 submission was provided for the claims under the 2019-20 Policies and the 2020-21 Policies.  
27 Bolthouse advised that as an “essential industry, Bolthouse has remained open and operational”  
28 but beginning in March 2020 “Bolthouse began implementing numerous policy and protocol

1 changes in response to the initial stages of COVID-19.” A true and correct copy of the letter from  
2 Bolthouse dated February 9, 2021, is attached hereto as Exhibit A.

3 53. Bolthouse advised that it was making a claim for its main processing facility in  
4 Bakersfield California, which is the focus of its business interruption claims. Ten of 14 locations  
5 that are insured under the Policies are located in California.

6 54. Bolthouse advised that it was seeking coverage for the following:

- 7 • \$1,362,503.00 for increased sanitization practices, product purchases, and third  
8 party vendors for additional sanitization.
- 9 • \$1,021,235.00 for PPE, equipment, and construction to implement social  
10 distancing requirements.
- 11 • \$6,842,398.00 for contract tracing, employee losses, hiring of additional  
12 employees, employee backfill hires, temporary staffing, overtime, and COVID-19  
13 sick pay.
- 14 • \$1,376,473.00 for approximately 1.7 million pounds of growing organic carrots  
15 that were not harvested due to shortages of harvest crews and reduced capacity.

16 55. On March 19, 2021, McLarens issued a letter on behalf of the Plaintiffs that  
17 contained a supplemental reservation of rights based on the additional information provided in  
18 Bolthouse’s RFI responses.

19 56. On April 2, 2020, Bolthouse responded to the supplemental reservation of rights  
20 letter to advise that Bolthouse believed that the unharvested carrots were not “growing crops”  
21 because the carrots were “fully matured” and “completed their growth cycle and were ready for  
22 market.” This letter also advised that Bolthouse believed that the “policies at issue cover not only  
23 direct physical loss, but also the **risk** thereof.” (emphasis in original) A true and correct copy of  
24 the letter from Bolthouse dated April 2, 2021, is attached hereto as Exhibit B.

25 57. On April 16, 2021, Bolthouse provided McLarens with a letter concerning a claim  
26 for “Employee Incentive Programs” that Bolthouse implemented in March 2020 “to incentivize  
27 its employee to remain with the Company and continue coming into work every day to do their  
28 jobs.” The April 16, 2021 letter advised that Bolthouse also “instituted a one-time bonus program

1 as an incentive for its employees to continue to work through Bolthouse’s busiest season, the  
2 early winter months.” Bolthouse is claiming \$8,401,400.00 for the weekly Incentive Program and  
3 an additional \$1,285,707.70 for the winter bonus program for a total of \$9,687,107.70. The  
4 additional claims for Bolthouse’s Employee Incentive Programs increased the total amount  
5 claimed under the Policies to \$21,785,900.70. A true and correct copy of the letter from  
6 Bolthouse dated April 16, 2021, is attached hereto as Exhibit C.

7 58. On May 14, 2021, McLarens issued two letters on behalf of the Plaintiffs to advise  
8 Bolthouse that there is no coverage for Bolthouse’s claims under the Policies provided for the  
9 2019-20 policy period or the 2020-21 policy period.

10 **FIRST CAUSE OF ACTION**

11 59. Plaintiffs re-allege and incorporate by reference each and every allegation of  
12 paragraphs 1 through 58 as if fully set forth herein.

13 60. Pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201, an actual controversy  
14 has arisen between Plaintiffs and Bolthouse regarding their respective rights, duties, and legal  
15 obligations under the Policies with respect to Bolthouse’s claim for insurance benefits.

16 61. Bolthouse seeks coverage for losses it alleges fall within the terms and conditions  
17 of the Policies. Bolthouse currently asserts that the presence of the Coronavirus/COVID-19 in and  
18 around the Insured Locations and/or the state and local government stay-at-home orders issued in  
19 response to the COVID-19 pandemic have caused physical loss of or damage to property that  
20 triggers coverage under the Policies.

21 62. Plaintiffs dispute that the Coronavirus/COVID-19, or the state and local  
22 government stay-at-home orders issued in response to the COVID-19 pandemic have caused or  
23 resulted in direct physical loss of or damage to Bolthouse’s Properties or any other property.

24 63. In particular, but not exclusively, Plaintiffs and Bolthouse dispute the following:

- 25 a. Whether any Insured Location suffered direct physical loss of or damage to  
26 property by a Covered Cause of Loss due to the Coronavirus/COVID-19.

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- b. Whether any Insured Location suffered direct physical loss of or damage to property by a Covered Cause of Loss due to any federal, state or local government orders issued in response to the COVID-19 pandemic.
- c. Whether any the Coronavirus/COVID-19 caused any direct physical loss of or damage to property that triggered the Policies' Time Element Coverages.
- d. Whether any federal, state or local government orders issued in response to the COVID-19 pandemic caused any direct physical loss of or damage to property that triggered the Policies' Time Element Coverages.
- e. Whether the Coronavirus/COVID-19 caused direct physical loss of or damage to any property located within one mile of insured property.
- f. Whether any federal, state or local government orders issued in response to the COVID-19 pandemic caused direct physical loss of or damage to any property located within one mile of insured property.
- g. Whether an order of civil or military authority prohibited access to an insured location as a result of the civil authority's response to direct physical loss of or damage to property located within one mile of Insured Property by a Covered Cause of Loss.
- h. Whether ingress or egress by Bolthouse's suppliers, customers, or employees was prevented by physical obstruction due to direct physical loss of or damage to property located within one mile of Insured Property by a Covered Cause of Loss.
- i. Whether there was a necessary suspension of Bolthouse's business activities resulting from direct physical loss of or damage to property by a Covered Cause of Loss at Direct Dependent Time Element Locations.
- j. Whether there is coverage for Bolthouse's claim for 1.7 million pounds of growing carrots that were not harvested.

- 1 k. Whether any exclusion in the Policies, including but not limited to the
- 2 contamination exclusion, precludes coverage for Bolthouse's claimed
- 3 losses.
- 4 l. Whether the Microorganism Exclusion in Policy No. PRPNA2003136
- 5 precludes coverage under Policy No. PRPNA2003136.
- 6 m. Whether the Communicable Disease Exclusion in Policy No.
- 7 PRPNA2003136 precludes coverage under Policy No. PRPNA2003136.
- 8 n. Whether the MAP Mold Exclusion in Policy Nos. FA0058173-2019-1 and
- 9 FA0058173-2020-1 precludes coverage under Policy No. FA0058173-
- 10 2019-1 and FA0058173-2020-1.
- 11 o. Whether the Communicable Disease Exclusion in Policy No. FA0058173-
- 12 2020-1 precludes coverage under Policy No. FA0058173-2020-1.
- 13 p. Whether the Communicable Disease Exclusion in Policy No. NAP
- 14 2003540-01 precludes coverage under Policy No. NAP 2003540-01.
- 15 q. Whether the Pollution and Contamination Exclusion in Policy No.
- 16 021318090 precludes coverage under Policy No. 021318090.
- 17 r. Whether the Pollution and Contamination Exclusion in Policy No.
- 18 044869187 precludes coverage under Policy No. 044869187.
- 19 s. Whether the Communicable Disease Exclusion in Policy No. 044869187
- 20 precludes coverage under Policy No. 044869187.

21 64. Resolution of the parties' rights, duties, and obligations in connection with the  
22 foregoing is necessary because Plaintiffs have no other adequate remedy at law, and a declaration  
23 from the Court is needed to resolve the dispute and controversy and grant complete relief to all  
24 parties in interest.

25 **REQUEST FOR RELIEF**

26 WHEREFORE, the Plaintiffs pray for the following relief:

- 27 1. A declaratory judgment in favor of Plaintiffs, and against Bolthouse adjudging and
- 28 declaring that:

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- a. Insured property did not suffer direct physical loss of or damage to property by a Covered Cause of Loss due to the Coronavirus/COVID-19.
- b. Insured property did not suffer direct physical loss of or damage to property by a Covered Cause of Loss due to any state or local government orders issued in response to the COVID-19 pandemic.
- c. The Coronavirus/COVID-19 did not cause any direct physical loss of or damage to property that triggered the Policies' Time Element Coverages.
- d. No federal, state or local government orders issued in response to the COVID-19 pandemic caused direct physical loss of or damage to property that triggered the Policies' Time Element Coverages.
- e. The Coronavirus/COVID-19 did not caused direct physical loss of or damage to any property located within one mile of insured property.
- f. No federal, state or local government orders issued in response to the COVID-19 pandemic caused direct physical loss of or damage to property located within one mile of insured property.
- g. No order of civil or military authority prohibited access to an insured location as a result of the civil authority's response to direct physical loss of or damage to property located within one mile of Insured Property by a Covered Cause of Loss.
- h. Ingress or egress by Bolthouse's suppliers, customers, or employees was not prevented by physical obstruction due to direct physical loss of or damage to property located within one mile of Insured Property by a Covered Cause of Loss.
- i. There was no necessary suspension of Bolthouse's business activities resulting from direct physical loss of or damage to property by a Covered Cause of Loss at Direct Dependent Time Element Locations.
- j. There is no coverage for Bolthouse's claim with respect to 1.7 million pounds of growing carrots that were not harvested.

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- k. Exclusions in the Policies, including but not limited to the contamination exclusion, preclude coverage for Bolthouse’s claimed losses.
- l. The Microorganism Exclusion in Policy No. PRPNA2003136 precludes coverage under Policy No. PRPNA2003136.
- m. The Communicable Disease Exclusion in Policy No. PRPNA2003136 precludes coverage under Policy No. PRPNA2003136.
- n. The MAP Mold Exclusion in Policy Nos. FA0058173-2019-1 FA0058173-2020-1 precludes coverage under Policy No. FA0058173-2019-1 and FA0058173-2020-1.
- o. The Communicable Disease Exclusion in Policy No. FA0058173-2020-1 precludes coverage under Policy No. FA0058173-2020-1.
- p. The Communicable Disease Exclusion in Policy No. NAP 2003540-01 precludes coverage under Policy No. NAP 2003540-01.
- q. The Pollution and Contamination Exclusion in Policy No. 021318090 precludes coverage under Policy No. 021318090.
- r. The Pollution and Contamination Exclusion in Policy No. 044869187 precludes coverage under Policy No. 044869187.
- s. The Communicable Disease Exclusion in Policy No. 044869187 precludes coverage under Policy No. 044869187.
- t. There is no coverage for any of Bolthouse’s claims under the Policies.

2. An award of reasonable attorneys’ fees and costs incurred by Plaintiffs to the extent warranted by this action.

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3. Any and all other relief for the Plaintiffs that the Court deems just and proper.

Dated: May 14, 2021

ROBINS KAPLAN LLP

By: /s/ Amy M. Churan  
Amy M. Churan

Attorneys for Plaintiffs  
Zurich American Insurance Company, General  
Security Indemnity Company of Arizona, and  
Faraday Capital Limited

Dated: May 14, 2021

DENTONS US LLP

By: /s/ David R. Simonton  
David R. Simonton

Attorneys for Plaintiffs  
Lexington Insurance Company and  
AIG Specialty Insurance Company

Dated: May 14, 2021

DLA PIPER LLP (US)

By: /s/ Erik D. Buzzard  
Erik D. Buzzard

Attorneys for Plaintiff  
Westport Insurance Corporation

ROBINS KAPLAN LLP

# **EXHIBIT A**



February 9, 2021

Via Email

Rob Edwards  
Vice President/Executive General Adjuster  
McLarens  
100 West Broadway, Suite 730  
Glendale, Ca 91210-1202  
*Rob.Edwards@mclarens.com*

Re: Wm. Bolthouse Farms, Inc. - Insurance Claims  
DOL: March 1, 2020 through Present and Ongoing

McLarens File Nos. 001.023716.MI and 001.024720.MI

To all interested parties:

This correspondence is regarding the claims made by Wm. Bolthouse Farms, Inc. (“Bolthouse”) to its insurance carriers for the interruption of its business and related claims dating back to, at a minimum, **March 1, 2020, through present**, pursuant to the various policies under which Bolthouse is insured. We are transmitting this correspondence to Mr. Edwards of McLarens as the adjuster for the primary layer of coverage for the numerous property policies held by Bolthouse with the intention that McClarens forward and advise all of said property carriers regarding this matter.

To the extent this claim encompasses multiple policy providers, periods and layers, please allow this correspondence to suffice for all applicable policies, 3/1/20 - present and ongoing.

### **Request to Toll Filing/Limitations Period**

Bolthouse initially noticed the instant claims to its various carriers over the past few months with a date of loss stretching back to March 1, 2020. Bolthouse now provides this correspondence to expound upon and document its claims, specifically relating to losses attributable to SARS-CoV-2, COVID-19, and the associated civil authority orders and events. In an effort to give our carriers time to better evaluate the claims set forth herein as well as due to the ongoing, open-ended nature of these claims and COVID-19, we hereby request that all carriers toll, suspend and extend all deadlines referenced their policies regarding the commencement of a legal action/suit against them to at least September 1, 2021, if commencement is required under the policy prior to that date.

We would appreciate confirmation of your agreement with this tolling request in writing by the close of business on Friday, February 19, 2021.



## **Background Facts – Bolthouse, COVID-19 and Response to Questions by McClarens**

Wm. Bolthouse Farms, Inc. is a farming, food and beverage company with its principal place of business located in Bakersfield, California. Bolthouse operates throughout California and also maintains facilities in Arizona, Washington and Illinois. Bolthouse employs approximately 2,500 people or more at any given time and also works with hundreds more temporary laborers through staffing agencies. Because of the nature of the work, employees often work in close quarters. Many employees carpool with one another and others live together.

This claim involves the international pandemic of the novel 2019 coronavirus, SARS-CoV-2, more commonly referred to as COVID-19 (“COVID”), and the insurable negative impact to Bolthouse’s business. As you are aware, COVID has been declared an international pandemic. It has spread rapidly, causing the closure of many businesses, limitations on travel, and general restriction of movement by the population at large. It has also caused a state of emergency to be declared by the United States, the State of California, the County of Los Angeles, the County of Kern, the City of Bakersfield, and a bevy of other municipalities throughout California.

As an essential industry, Bolthouse has remained open and operational to the best of its abilities during this time, dating back to March of 2020. Despite the ever-increasing amount of COVID-positive tests throughout the country, from single digits in March to tens of thousands per day in December, Bolthouse and its employees continued to work in an effort to provide the country with healthy food and beverages in one of its greatest times of need. But this fight did not come without a price, as COVID, both directly and indirectly, has caused Bolthouse to incur more than ten million dollars of unavoidable costs, expenses and losses.

In March, 2020, Bolthouse began implementing numerous policy and protocol changes in response to the initial stages of COVID-19, all of which came at a significant expense to Bolthouse. The changes progressed over the following months as federal, state and local rules, regulations and guidance were promulgated and expanded, and as Bolthouse began experiencing direct physical losses and damage to its property. These included: the provision of personal protective equipment each day to all reporting employees (“PPE”); temperature screening of every employee prior to entering the worksite; social distancing procedures; construction; additional staffing for implementation and compliance; replacement staffing due to hundreds of employees testing positive or coming into contact with others whom tested positive; increased amounts of safety product purchasing; substantial sanitization and decontamination efforts; retention and expansion of numerous outside vendors for staffing, sanitization, construction, and other projects. Bolthouse also suffered through multiple partial shutdowns in various areas of its operations, leading to loss of product, loss of sales and profits, reduced capacity and reduced functionality.

From the date of loss through the end of calendar year 2020, Bolthouse estimates it spent on average approximately \$500,000.00 per week in COVID-related expenses, the majority of which are covered, in addition to the losses through facility closures.

In response to Bolthouse’s initial claims, McClarens, as authorized representative of Zurich and on behalf of the insurers and underwriters providing for the primary layer of coverage under





Bolthouse’s property insurance policies, transmitted a series of questions to Bolthouse. The following includes the questions as well as Bolthouse’s responses.

<p>1. Please identify all locations that you are claiming to have been impacted by COVID-19</p>	<ul style="list-style-type: none"> <li>- All California operations, in particular our primary plant located in Bakersfield, CA</li> <li>- Hodgkins, IL, shipping and distribution facility</li> <li>- Tolleson, AZ, and surrounding areas, processing facility with local farming operations</li> <li>- Prosser Washington, and surrounding areas, processing facility with local farming operations</li> </ul>
<p>2. In what way has each of the affected locations been impacted by COVID-19 (i.e. forced closure, cleaning, slow-down)?</p>	<p><u>All Locations</u></p> <ul style="list-style-type: none"> <li>- Increased sanitation practices, including additional employees, sanitization products, and new equipment; hiring of outside sanitation companies in the event of COVID positives and outbreaks onsite (total costs of \$1,362,503.00<sup>1</sup>).</li> <li>- Health and safety expenses relating to equipment, construction and related projects (\$1,021,235.00)             <ul style="list-style-type: none"> <li>o Provision of PPE (masks, gloves, sanitizers, respirators as needed, and other equipment recommended or required by the CDC, Cal OSHA, Department of Public Health and similar organizations) to all reporting employees</li> <li>o Nasal swab testing</li> <li>o Construction and related items to ensure social distancing and compliance with governmental guidelines, including physical barriers, partitions, new break rooms, etc.</li> </ul> </li> <li>- Temperature screening of every employee and visitor as well as other COVID related health screening services (total costs of \$1,496,184.00).</li> <li>- Expenses relating to staffing (\$6,842,398.00)             <ul style="list-style-type: none"> <li>o Contact tracing procedures, resulting in additional employees and overtime to carry out procedures</li> <li>o Loss of employees due to COVID positive, COVID testing, COVID symptoms, and implication through contact tracing.</li> <li>o Hiring of additional employees and temporary workers to backfill absences, replace employees, and fill vacancies</li> <li>o Overtime</li> <li>o COVID sick leave pay pursuant to the COVID-19 Supplemental Paid Sick Leave Act (mirroring the FFCRA)</li> </ul> </li> <li>- COVID pay to all hourly employees reporting to work</li> </ul>

<sup>1</sup> All cost estimates are from early March through December 2020 unless otherwise stated.



	<p><u>California</u></p> <ul style="list-style-type: none"> <li>- The Bakersfield Cello plant was forced to close on multiple occasions due to COVID. These closures caused a loss of sales, as well as acreage to back up. The acreage backing up caused us to disk acres and lose product that was fully matured and awaiting harvest.</li> <li>- Portions of our harvesting crew also experienced COVID issues, which also contributed to led to less acres being harvested, acres backing up and lost product [see 4(b)(i) below].</li> <li>- In total, through June 16, 2020, Bolthouse was forced to abandon 58.5 acres of fully matured organic short-cut carrots, more than 1.7 million pounds worth. As a result of the forced disking of this product, Bolthouse lost \$1,376,473.00 of top line revenue, inclusive of a grower cost of \$402,222.00 paid by Bolthouse, lost profit margin of \$373,892.00, and \$112,259.00 in lost contribution margin.</li> <li>- Following the complete Cello shutdown in late April, the Cello facility experienced a reduction in capacity of 40% on April 28, 2020, with continued capacity reductions over the ensuing months. Bolthouse paid \$1,373,945.00 for Cello overtime wages above historical pre-COVID levels from mid-March 2020 through December 2020 to maximize Bolthouse’s production capabilities given the limited circumstances.</li> </ul>
<p>3. Did you suffer physical loss or damage at any location? If so, please describe the damage at each location and what efforts have/will be made to repair the damage.</p>	<p>Yes. Physical loss or damage has been defined by the Courts as “physical alteration” and “loss of the ability to use a property for its intended purpose,” among other definitions and concepts advanced under the law. The policy also includes the “risk” of physical loss or damage as covered.</p> <p>The facility shutdowns/closures as well as the losses in cello and harvest crews caused substantial loss of carrots that could no longer be used or sold to customers. These carrots became physically altered and a loss through the process of expiration and becoming inedible. As stated above, Bolthouse lost nearly \$1.4mm of top line revenue for the disked acres and lost fully-matured carrots. Nothing could be done to salvage or repair this.</p> <p>COVID has also caused the loss of numerous employees for periods of time during which the employees were compensated while not being able to work and also resulting in additional employees filling the rolls of those out.</p>



	<p>Bolthouse has also had to transform portions of its facility to comply with rules and regulations as well as for the safety of its employees. This physical alteration and altered use from its intended purpose contributed to losses ranging from additional personnel relating to COVID rules to reduced capacity in processing and lost profits.</p> <p>Bolthouse also refers to its responses to Question #2 above, Question #4 below, and the totality of this document.</p>
<p>4a. What were the dates and times that each of the facility shutdowns began and ended?</p>	<p><u>California</u></p> <ul style="list-style-type: none"> <li>- April 26 and 27, 2020- full 24-hour shutdown of Cello facility</li> <li>- April 28, 2020- 12-hour shutdown of Cello facility</li> <li>- April 28 and thereafter- production capacity reduction to Cello facility</li> <li>- April through early June, 2020- various shutdowns including 12-hour per day shutdowns on May 4, 5 and 6, of Cello facility</li> <li>- Mid-May, 2020- various partial shutdowns of Bolthouse’s harvest crew located in Rawley resulting in millions of dollars of lost acreage product</li> </ul>
<p>4b. What was the cause of the shutdowns?</p>	<p>All shutdowns and closures were caused by COVID-19.</p>
<p>4b(i). If the shutdown was caused by employees testing positive for COVID-19, please identify: the number of employees who tested positive for COVID-19, the date the employees were last present at the insured location, and when you were advised about the positive tests.</p>	<p><u>California</u></p> <ul style="list-style-type: none"> <li>- Cello shutdowns: From mid-April through May and into June, various employees of the Cello plant became symptomatic for COVID and were sent out for testing. In total, between April 21 and May 4, 27 Cello employees tested positive for COVID. Between symptomatic employees, positive employees, and employees implicated through contact tracing, the lack of staff coupled with sanitization and related needs caused the late April shutdown. Further, this rash of symptoms and positives led to the May shutdowns, where all Cello employees (over 100) were sent for COVID testing, resulting in approximately 10 more positive test results.</li> <li>- Harvest crew: On May 15, 2020, 9 employees reported symptomatic and were sent for testing. Between May 15 and May 19, 26 total employees were sent out for testing and unable to report to work pending results. Over the following weeks, numerous additional employees complained of symptoms, causing them to be sent out for testing along with those identified through contact tracing, causing an insufficient labor staff to perform work. In total, 14 employees tested positive during this period.</li> </ul>



<p>4b(ii). If the cause of the shutdown was to implement new procedures/protocols related to COVID-19, please describe the procedures/protocols that were implemented in order to allow the location to reopen.</p>	<p>The shutdowns were not caused due to implementation of new protocols and procedures. Bolthouse has been steadfast in adopting and putting into practice new policies and procedures relating to COVID-19 and the prevention of the spread thereof. Bolthouse has made every effort to continue its operations while doing so.</p>
<p>4b(iii). If the shutdown was ordered by a government authority, please identify the entity that ordered the shutdown and provide the order and any correspondence with the government entity regarding the shutdown.</p>	<p>The shutdowns were not ordered by a government authority. They were enacted by Bolthouse for the health and safety of all of its employees, visitors and the community.</p>
<p>4c. What was done to reopen the affected facility (e.g. test employees for COVID-19, disinfect the insured premises, etc.)</p>	<p>Bolthouse retained an outside vendor to complete full sanitation of the Cello Plant for each shutdown. All employees were sent for COVID testing before, during and/or after the complete shutdowns. The same is true for the harvest crew, resulting in various complete or partial shutdowns.</p>
<p>5. Have there been any other temporary closures and if so, has there been any impact to your typical operations? Are you fully operational or partially operating?</p>	<p>See responses above and the totality of this document.</p>



<p>6. Have any employees at other locations tested positive for COVID-19? If yes, please identify: all locations where an employee has tested positive for COVID-19, the number of employees who tested positive for COVID-19, the date the employees were last present at the insured location, and when you were advised about the positive tests.</p>	<p><u>California</u></p> <ul style="list-style-type: none"> <li>- Approximately 305 total employees have tested positive across our operations, including those working at facilities at our primary plant, those working from home, and those out harvesting.</li> <li>- The first positive California result occurred in March, 2020. Positive results have been ongoing since. Notifications typically come within hours or days of a positive test. As soon as Bolthouse is notified that an employee is symptomatic or tested positive, Bolthouse ensures the impacted employee is excluded from the worksite for the requisite amount of time; performs contact tracing as to the positive employee and others that are symptomatic that reported to the worksite; and follows all governmental and company rules, regulations, and guidance.</li> </ul> <p><u>Illinois</u></p> <ul style="list-style-type: none"> <li>- 16 total employees have tested positive.</li> </ul> <p><u>Arizona</u></p> <ul style="list-style-type: none"> <li>- 1 total employee has tested positive.</li> </ul> <p><u>Washington</u></p> <ul style="list-style-type: none"> <li>- 24 total employees have tested positive.</li> </ul>
<p>7. Has any governmental agency issued any directive that impacted your operation?</p>	<p>Yes. CDC; EEOC; Department of Industrial Relations; Cal/OSHA; Orders by California Governor Gavin Newsome; Kern County Department of Public Health; Washington state and local authorities; Arizona state and local authorities; Illinois state and local authorities.</p>
<p>8. Did any public health authority order evacuation, disinfecting, or cleaning of the insured locations due to a confirmed communicable disease event at the insured location?</p>	<p>No, although the CDC has issued guidance regarding the cleaning, disinfecting and reopening of worksites infected with COVID-19. Disinfecting and cleaning of our locations due to a confirmed communicable disease (COVID-19) was a decision made by the insured for the safety and protection of itself, its employees, and the community at large and also taking into account the CDC recommendations.</p>
<p>9. Did you receive any correspondence, letter, email from a Public Health Authority or other authority ordering the shutdown and/or providing instruction on what the hotels needed to do at their facility? If so, please forward said documentation.</p>	<p>No. The temporary shutdowns at various locations within our facilities due to a confirmed communicable disease (COVID-19) were decision made by the insured for the safety and protection of itself, its employees, and the community at large.</p>



10. Was there a confirmed communicable disease event at an insured location or dependent property? If yes, please provide as much information as possible.	Yes. COVID-19. See numbers 2-6, above.
11. Have you incurred any costs directly related to the reported event? If so, please outline and provide supporting documentation. Please also outline any additional anticipated costs.	Yes. See above and totality of this document.  Bolthouse anticipates the same or similar costs moving forward for the foreseeable future, likely through the duration of COVID as a pandemic.
12. Do you anticipate any further impact as a direct result of this event for which you are making a claim? If so, please outline.	Yes. See number 11, above.  Bolthouse anticipates ongoing impacts as COVID persists, including the ongoing provision of PPE, changing and evolving policies and procedures requiring expense to implement, further hiring, costs of employee replacements, and the potential for additional shutdowns resulting in lost product and lost profits as experienced previously.

### The Property and Pollution Policies Provide Coverage

As a threshold matter, there are numerous policies at issue covering varying, discrete periods of time. First is the policy period differential, as many policies provide coverage from the initial Date of Loss through approximately June 16, 2020, and then a successive policy for June 16, 2020, through present. Second are the different policies themselves, providing different coverages depending on the type of loss. As Bolthouse’s premises and arguments are founded upon the same set of facts and will generally apply to all, Bolthouse submits this singular analysis for consideration by all carriers for all periods of time, as appropriate. To the extent there are differences in scope or definition, we will attempt to address them and otherwise ask that our position be fully considered by all.

The property policies insuring Bolthouse generally require a “direct physical loss or damage” caused by a “Covered Cause of Loss to Covered Property.” (Zurich EDGE Global Policy covering periods 2019-2020 and 2020-2021 [“Property Policy”] Section 1.01, 3.01 *et seq.*) While the Policy provides definitions for Covered Cause of Loss, which includes “[a]ll risks of direct physical loss of or damage” (Property Policy Section 7.11 [emphasis added]), and Covered Property (Property Policy Section 3.01-3.01.04), it does **not** define the foundational term “direct physical loss or damage.” The Courts have reached varying conclusions in defining the phrase,



with many decisions in favor of insured Litigants including in relation to direct physical loss or damage relating to COVID. For example, a California Court recently held that direct physical loss does not require physical, tangible alteration of the property and that additional cleaning and sanitization due to employees testing positive for COVID could constitute such a condition in overruling a demurrer by an insurer. (See *Goodwill Industries of Orange County v. Philadelphia Indemnity Ins. Co.*, Case No. 30-2020-01169032, Sup. Ct. of CA, Cnty. of Orange.)

The policy also contains a number of exclusions. First is an exclusion relating to contamination, an exclusion which does not apply. Indeed, the exclusion for contamination, as well as the definition of contamination itself, provide that a contamination is not excludable in and of itself and, in fact, contamination is not excluded if it results from a direct physical loss or damage. We also note the Louisiana Amendatory Endorsement, which applies to the Policy in full and alters the same. This Endorsement removes the term “virus” from the definition of “contamination.” Finally, the Policy also recognizes a right of recovery relating to decontamination costs, a point underscored by the above-referenced case. (See Property Policy Section 5.02.07.)

Turning to Property Policy Section 4, 4.01.01 provides for payment of a time element loss specifically relating to the suspension of business activities. Suspension includes the slowdown or cessation of the insured’s business activities. (Section 7.69.01.) Recovery then follows to the extent the Company was unable to make up lost production within a reasonable period of time, unable to continue such operation or services, and demonstrates a loss of revenue. (Section Property Policy 4.01.02.) Similarly, the Policy calls for recovery relating to extra expenses incurred by the Insured “to resume and continue as nearly as practicable the Insured’s normal business activities that otherwise would be necessarily suspended, due to direct physical loss of or damage caused by a Covered Cause of Loss to Property of the type insurable under this policy at a location.” (Property Policy Section 4.02.03.)

Many of the quantified losses Bolthouse has incurred in the past 11 months are due to direct physical loss or damage or, at a minimum, the risk thereof. Not only are all of these losses generally covered by the Policy and the plain language of the terms set forth therein, but they are further covered under the Protection and Preservation of Property Special Coverage. (See Section 5.02.23 *et seq.*)

Bolthouse lost nearly two million pounds of matured, ready-to-harvest organic carrots that were unable to be timely harvested and shipped through no fault of Bolthouse, resulting in a top line revenue loss of \$1,376,473.00. There is no question that these are covered losses, flowing from shutdowns and impossibility, leading to the fully-matured product expiring and needing to be disked. There was no opportunity or safe manner for making up this production or continuing operations beyond what was accomplished by Bolthouse. In fact, had Bolthouse not acted as it did in promptly resuming operations to the best of its abilities, claimable and covered damages would have been higher.

Due to the risk of additional physical losses and other damage as well as requirements set in place by governmental agency and in an effort to minimize potential losses, Bolthouse incurred



an additional \$10,722,320.00 in costs from March 2020 through December 2020, as outlined above. These are covered costs as they fall within various provisions of the property policies under Sections 3, 4, 5 and 6. These increased expenses demonstrate an obvious response to the risk of physical loss or damage as well as acts of protecting and preserving property by ensuring the existence of an employee population to harvest, produce and ship the matured crop stock and enabling these activities to occur while complying with federal, state and local regulations and guidance. Whether it is temperature screening, PPE, the construction of health measures and sanitation to ensure employee and product safety or the additional hiring and pay issued to provide for Bolthouse's products, its property, to go from ground to buyer prior to the unharvested crop becoming ruined, the actions of Bolthouse were necessary in response to a clear and present risk and danger of property loss and damage. Without these measures and costs, Bolthouse's entire farming operation, including tens (if not hundreds) of millions of pounds of commercially ready, finished product, would have been a complete loss.

### Damages

As outlined above, Bolthouse seeks the following sums as covered losses under either the Property Policy, the Pollution Policy or both for the period of March 1, 2020 through December 31, 2020:

<u>Category</u>	<u>Description</u>	<u>Value/Claimed Amount</u>
Sanitization and Decontamination	Increased sanitization practices, product purchases, third party vendors	\$1,362,503.00
Health and Safety	PPE, equipment, construction	\$1,021,235.00
Screenings	Temperature screenings, other COVID-related health screenings	\$1,496,184.00
Staffing	Contact tracing, employee losses, hiring of additional employees, employee backfill hires, temporary staffing, overtime, COVID sick pay	\$6,842,398.00
Fully Matured Carrots	Loss of 58.5 acres (approximately 1.7 million pounds) of fully matured organic carrots in conjunction with Cello and harvest crew shutdowns and capacity reductions	\$1,376,473.00
	<b><u>TOTAL:</u></b>	<b><u>\$12,098,793.00</u></b>

Bolthouse reserves its right to amend this claim to seek further damages up to and through the expiration of the relevant policy period(s) until such time as the claim has resolved.

*[Remainder of Page Intentionally Left Blank]*





### Concluding Remarks

All future correspondence regarding this matter should be directed to my attention at this time. I can be reached via phone at 661.477.6579 or email at [Dennis.Gallagher@Bolthouse.com](mailto:Dennis.Gallagher@Bolthouse.com).

We thank you in advance for your attention to this matter. We look forward to working with you and the insurance carriers in reaching an amicable resolution.

Best regards,

A handwritten signature in blue ink, appearing to read "D. P. Gallagher, II".

Dennis P. Gallagher, II, Esq.  
Counsel

*Dennis.Gallagher@bolthouse.com*

cc: Robert Stevens, Bolthouse Farms (*via email*)  
Matthew Stocco, Bolthouse Farms (*via email*)  
Michael Rosenthal, Bolthouse Farms (*via email*)  
Matthew R. Ayres, Esq., Bolthouse Farms (*via email*)  
Matt Gurga, Lockton Insurance Brokers, LLC (*via email*)  
Jeff Mazie, Lockton Insurance Brokers, LLC (*via email*)  
Karen Dillon, Lockton Insurance Brokers, LLC (*via email*)  
Charles Malaret, Morgan Lewis & Bockius (*via email*)

# **EXHIBIT B**



April 2, 2021

Via Email

Rob Edwards  
Vice President/Executive General Adjuster  
McLarens  
100 West Broadway, Suite 730  
Glendale, Ca 91210-1202  
*Rob.Edwards@mclarens.com*

Re: Wm. Bolthouse Farms, Inc. - Insurance Claims  
DOL: March 1, 2020 through Present and Ongoing

McLarens File Nos. 001.023716.MI and 001.024720.MI

Dear Mr. Edwards:

We are in receipt of, and thank you for, your letter dated March 19, 2021 (the “McLarens Correspondence”), wherein you respond on behalf of the “Insurers” to our correspondence dated February 9, 2021 (the “Bolthouse Correspondence”). This correspondence serves to briefly reply to a handful of points in the McLarens Correspondence as well as elaborate upon two of Bolthouse’s primary areas of contention. Bolthouse is not withdrawing or waiving any of its claims, but would like to provide additional emphasis as to two areas in particular.

Bolthouse’s RFI Responses

The McLaren’s Correspondence seeks confirmation as to four points. We provide responses to those in the same order:

1. Policy periods- Correct.
2. Shutdowns- The Bolthouse Correspondence identifies the shutdowns and suspensions to which Bolthouse is claiming a covered loss at this time.
3. Government Agency Directives- Although a government agency did not directly shutdown operations or prohibit access to locations, Bolthouse strictly complied with all governmental guidance and orders, which contributed either in whole or in part to the shutdowns, suspensions, and diminished location access as set forth in the Bolthouse Correspondence.
4. Pollution Policies- Bolthouse submitted a claim under its Premises Pollution Liability Policy. The claim was initially noticed on January 4, 2021, and preliminarily denied on January 13, 2021. Bolthouse then submitted its full claim on March 10, 2021, which has since been denied. Claims, denials, and policy documents are enclosed herewith.



### Complete Loss of Property Following Disking of Acres

Bolthouse lost nearly two million pounds of matured, ready-to-harvest organic carrots that were unable to be timely harvested and shipped through no fault of Bolthouse, resulting in a top line revenue loss of \$1,376,473.00. The McClarens Correspondence highlights the fact that “growing crops” are not “covered property” under the Policy. This contention has no relevance, as the carrots Bolthouse is claiming as a loss were fully matured; they were a complete piece of property and, as such, covered under the policy. Similarly, there is no question that the disking of the acres and loss of the carrots is a “direct physical loss” by the plain language meaning of the terms. Indeed, carrots that had completed their growth cycle and were ready for market that subsequently become unusable and unmerchantable are unquestionably the physical loss of property.

The McClarens Correspondence also points to the Communicable Disease Endorsement and associated Communicable Disease Exclusion (collectively, the “CDE”), a position which also lacks merit for two reasons. First, the CDE was not contained within the 19-20 policy, but was added to the 20-21 policy. Bolthouse is claiming quantifiable losses which occurred during the 19-20 policy. The disked acres and loss of mature carrots falls fully within this timeframe, rendering the CDE inapplicable.

Second as to the CDE is the question of causation. Here, the acres were disked and the carrots were lost primarily due to a lack of manpower to harvest and transport the carrots. The crop was not lost due to it contracting COVID-19 or a communicable disease. Nor was it lost due to becoming infected with some kind of mold or mildew during its normal lifecycle (harkening not only to the inapplicability of the CDE but also to the Microorganism and Map Mold Exclusions). Although COVID-19 played a role in the availability of sufficient people to complete harvest, relying on that premise as the basis for exclusion under the CDE lacks the requisite causal link. Causation under that theory is simply far too attenuated to justify denial of the claim.

Thus, there is no question that the disked acres and resulting loss of millions of pounds of fully-matured, ready-for-market carrots these are covered losses, direct physical losses of property, and not subject to exclusion. There was no opportunity or safe manner for making up this production or continuing operations beyond what was accomplished by Bolthouse.

### Health, Safety and Sanitation Measures

Bolthouse is also seeking coverage for approximately \$4,013,603.00 (through December 31, 2020, and ongoing<sup>1</sup>) relating to health and safety costs, including personal protective equipment, construction, temperature testing, health screening, sanitization and decontamination, amount other categories of expenses.

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<sup>1</sup> Of the damages claims for these categories through December 31, 2020, Bolthouse calculates the following for the period of March 1, 2020, through June 16, 2020, representing the end date of the 19-20 policy: Sanitization and decontamination- \$201,879.00; health and safety (PPE, equipment, construction)- \$435,521.00; temperature and health screenings- \$379,393.00.00.



First, as discussed above, the CDE sections were added to the 20-21 policy, but Bolthouse's claimed losses date back to March 1, 2020, bringing at least three and a half months of expenses under the 19-20 policy and arguably more as the losses were and still are ongoing.

Second, as explained at length in the Bolthouse Correspondence, the policies at issue cover not only direct physical loss, but also the **risk** thereof. Bolthouse has identified numerous actual and prospective direct physical losses, most notably the disked acres and lost carrots discussed above. These further demonstrate the risk of additional loss and the reasonableness of Bolthouse's proactive actions to prevent more of the same while mitigating others. The expenses incurred by Bolthouse not only fall within losses covered by the policies at issue, but also exhibit Bolthouse's commitment to the safety of its property, its employees and the community at large, facts without cannot go without consideration.

#### Concluding Remarks

We thank you against for your attention to this matter. Should you have any further questions, please address them to the undersigned.

Best regards,

A handwritten signature in blue ink, appearing to read "D. P. Gallagher, II".

Dennis P. Gallagher, II, Esq.  
Counsel

*Dennis.Gallagher@bolthouse.com*

Enclosures (as stated)

cc: Robert Stevens, Bolthouse Farms (*via email*)  
Matthew Stocco, Bolthouse Farms (*via email*)  
Matt Gurga, Lockton Insurance Brokers, LLC (*via email*)  
Jeff Mazie, Lockton Insurance Brokers, LLC (*via email*)  
Charles Malaret, Morgan Lewis & Bockius (*via email*)

# **EXHIBIT C**



April 16, 2021

Via Email

Rob Edwards  
Vice President/Executive General Adjuster  
McLarens  
100 West Broadway, Suite 730  
Glendale, Ca 91210-1202  
*Rob.Edwards@mclarens.com*

Re: Wm. Bolthouse Farms, Inc. - Insurance Claims  
DOL: March 1, 2020 through Present and Ongoing

McLarens File Nos. 001.023716.MI and 001.024720.MI

Dear Mr. Edwards:

This correspondence is further to the open claims of Wm. Bolthouse Farms, Inc. (“Bolthouse”), file numbers as indicated above, noticed by Bolthouse dating back to March 1, 2020 and ongoing (the “Claims”).

Bolthouse continues to evaluate its property and business losses in conjunction with its Claims, COVID-19 and the like. Following further evaluation of the insurance policies at issue (collectively, the “Policies”) as well as internal review of expenditures and losses attributable to the circumstances set forth in the Claims, Bolthouse has identified an additional covered category of damages within the Claims.

As Bolthouse has set forth at length in its prior correspondence, the Policies at issue provide coverage not only for direct physical loss or damage, but also the risk of the same. Similarly, acts of mitigation are covered and compensable. Bolthouse has suffered numerous losses as direct physical losses, risks thereof, and mitigation efforts designed and reasonably calculated to minimize Bolthouse’s losses and prevent future loss or damage.

One such category is Bolthouse’s provision of additional incentives in the form of weekly monetary sums as well as a one-time bonus given to certain employees in an effort to encourage their continued work in the face of the dangers of COVID-19 so that further losses could be avoided.

In the company’s view, these payments were a necessary component of its overall effort to mitigate its losses. Indeed, given that COVID-19 was present at all Bolthouse locations consistently since March 2020, Bolthouse felt it was important to incentivize its employees to remain with the Company and continue coming into work every day to do their jobs. To that end,



starting in late March 2020, Bolthouse began the weekly incentivization program, and continued it through early March 2021. In total, Bolthouse paid \$8,401,400.00 to its employees through this program.

In a similar vein, Bolthouse instituted a one-time bonus program as an incentive for its employees to continue to work through Bolthouse's busiest season, the early winter months. Nearly every single Bolthouse employee employed during this time period received a bonus for their hard work. These bonuses were designed to mitigate Bolthouse's losses, which no doubt would have been catastrophic had Bolthouse not taken the substantial amount of safety steps discussed in prior correspondence and added the bonus incentive to keep harvest, production and shipping lines functioning through the holiday season. The total aggregate cost of this bonus payout was \$1,285,707.70.

There is no doubt that these two programs both reduced the risk of losses that would otherwise be covered under the Policies and helped to minimize the losses themselves. As a result, Bolthouse suffered a covered loss of **\$9,687,107.70**, which it hereby claims under the Policies as a further, incremental line item of losses within its existing Claim that is currently under submission and consideration.

#### Summary of Claimed Covered Losses and Monetary Values

For purposes of a singular reference point, Bolthouse is making the following claims for losses/damages:

<u>Category</u>	<u>Description</u>	<u>Value/Claimed Amount</u>
Sanitization and Decontamination*	Increased sanitization practices, product purchases, third party vendors	\$1,362,503.00
Health and Safety*	PPE, equipment, construction	\$1,021,235.00
Screenings*	Temperature screenings, other COVID-related health screenings	\$1,496,184.00
Staffing*	Contact tracing, employee losses, hiring of additional employees, employee backfill hires, temporary staffing, overtime, COVID sick pay	\$6,842,398.00
Fully Matured Carrots*	Loss of 58.5 acres (approximately 1.7 million pounds) of fully matured organic carrots in conjunction with Cello and harvest crew shutdowns and capacity reductions	\$1,376,473.00
Mitigation Through Employee Incentive Programs**	Weekly and additional winter monetary incentives designed to incentivize the employee base and minimize attrition	\$9,687,107.70
	<b><u>TOTAL:</u></b>	<b><u>\$21,785,900.70</u></b>





\* *The first five categories cover the period of March 1, 2020 through December 31, 2020. Bolthouse is in the process of quantifying claims and damages for those categories from January 1, 2021 through present and those claims remain ongoing.*

\*\* *The sixth category for Employee Incentive Programs covers the period of March 1, 2020 through March 5, 2021. Bolthouse does not anticipate any further revision or addition to this item as the programs are complete as of the date of this correspondence. Bolthouse reserves its right to a further claim under this itemization should one arise.*

Concluding Remarks

Please consider this correspondence as further and supplemental to our prior correspondence, all in regard to the same claims initially noticed by Bolthouse in the Spring of 2020 occurring during the 2019-2020 and 2020-2021 policies. Should you require any additional information or support for Bolthouse's claims, please let me know. We stand prepared to fully cooperate with the insurers' ongoing investigation.

We thank you again for your attention to this matter. Should you have any further questions, please address them to the undersigned.

Best regards,

A handwritten signature in blue ink, appearing to read "D. P. Gallagher, II".

Dennis P. Gallagher, II, Esq.  
Counsel

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cc: Robert Stevens, Bolthouse Farms (*via email*)  
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Kevin Hotter, Esq., Bolthouse Farms (*via email*)  
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